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STUDIES IN INTERNATIONAL LAW

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STUDIES

IN

INTERNATIONAL LAW

BY

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PREFACE

THIS volume has no pretensions to be anything more than is indicated by its title-page. It is a collection of such By-studies of special points as are incidental to the continuous exploration and exposition of any great department of knowledge.

It is hoped that the papers here put together may be found to contain matter of permanent interest—diplomatic, personal, or bearing upon the history of opinion—which could not readily be found elsewhere. Most of them were originally delivered as lectures, and many have appeared, as will be seen, in various reviews, to the editors of which the author is indebted for permission to republish them. The "Studies" are now printed substantially as they were first written; but they have been brought up to date, whenever this seemed desirable, by the addition of brief notes. They have also been roughly grouped, according to subject, under the several heads of "The Law of War," "Illustrations of the System of International Law," "The "Eastern Question," and "Biographical Sketches."

T. E. H.

OXFORD,
Nov. 2, 1898.

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I

ALBERICO GENTILI[1]

A PECULIAR interest attaches to the study of International Law at Oxford, from the fact that the history of the science has so many points of contact with the annals of the University. The very name by which it is commonly known is due to a suggestion of one of our Regius Professors[2]; some of its most important doctrines have been elaborated by a succession of Oxford-bred civilians; the most eminent judge who ever presided in a prize court was a typical Oxford man[3]; and I need hardly remind you of the services rendered both to his University and to his country at large by that accomplished master of the Law of Nations[4], whose place here it is my difficult, though honourable, task to attempt to fill.

I propose, however, to-day to speak of an earlier luminary than any of these; of one, indeed, who has some claim to

[1] An Inaugural Lecture delivered at All Souls College, November 7, 1874, London, Macmillan & Co., 1874: translated into Italian, with additions by the author, by Count Aurelio Saffi, Roma, Loescher & Co., 1884.

[2] Richard Zouche. [3] Lord Stowell.

[4] Mountague Bernard.

dispute with Grotius himself the title of "the father of "International Law."

It is just conceivable that a Grotius might have sprung into being had Victoria, and Soto, and Gentilis never lived; but the actual Grotius entered into the labours of these men. Nor is his greatness lessened, though it is partly accounted for, by this admission; any more than the fame of Shakespeare is dimmed by our knowledge of the existence of Peele, and Greene, and Marlowe.

Grotius confesses his debt to Gentilis, though in words which hardly suggest its full extent. "Albericus Gentilis," he says, "cuius diligentia sicut alios adiuvari posse scio, et "me adiutum profiteor[1]." In point of fact, the general scheme of the immortal work of Grotius is taken from that of his predecessor, and both works rest upon the same conception of natural Law. The finished picture has, however, consigned the sketch to oblivion, and the merits of the earlier jurist by no means receive the recognition which they deserve.

In order to a just estimate of the value of the labours of Gentilis, it is necessary to be acquainted with his place in history. The accessible information upon this subject is, however, at once so meagre and so inaccurate, that I have thought it worth while to offer to the University of which he was once a principal ornament, but in which his memory has now wellnigh perished, some account, from authentic sources, of his not uneventful life.

The biographical dictionaries have generally been content to reproduce such statements with reference to Albericus as are contained in an academical oration delivered in honour of his brother Scipio[2]. But much may also be gleaned from allusions scattered up and down in the innumerable books which were written by the two

[1] *De I. B. et P.*, Prolegomena, § 38.

[2] Piccarti *Laudatio funebris*, Norimbergiae, 1617, shortly cited in the notes to this lecture as *Laudatio.*

brothers, and much from contemporary literature. From the last-mentioned source more may doubtless be derived than I have had leisure to discover.

The name Gentili was borne by two noble Italian families, distinguished respectively as the "Red" and the "White" families[1]. To the former of these belonged Matteo Gentili, a physician settled at Castello di San Ginesio, a small but ancient town in the march of Ancona[2]. He was a grave and stern man[3], devoted to science, but not sufficiently in advance of his age to be prevented from discussing the question whether or no diseases are the work of demons[4].

His wife, Lucrezia[5], bore him seven children, of whom the eldest, Alberico, and the youngest but one, Scipio, are known to fame.

Alberico was born January 14, 1552[6], and was in due course sent over the Apennines to the neighbouring University of Perugia[7]. It so happens that the aspect which the city must have presented during his student days is made known to us by a bird's-eye panorama of it, taken just at that time. "Old College," "New College," and the then recently founded "Collegium Bartolinum," are represented in this curious print[8]. The University

[1] On the Gentili family see Appendix I.

[2] *Memorie istoriche della terra di San Ginesio, dall' Abate* T. Benigni, in Colucci, *Delle Antichità Picene*, Fermo, 1786-94, tom. xix, cf. ii, v, vii, xxiii; G. B. Rampoldi, *Corographia dell' Italia*, 1834, s. v. Albericus makes some exaggerated claims on behalf of his birthplace in his *De Armis Romanis*, lib. ii. c. 5; cf. Colucci, *Antichità Ascoline*, Fermo, 1792.

[3] "Iudicio maturo coctoque homo, gravitate severa, et prisci illius aevi sine cerussa et similagine huius saeculi." *Laudatio.*

[4] Scip. Gentilis, *Apol. Apul.* p. 260.

[5] By birth Petrelli. See Appendix I. [6] See Appendix II.

[7] He began law study fourteen years before 1583. Gudii, *Epistolae*, p. 135.

[8] See Braun et Hohenbergius, *Civitates Orbis Terrarum*, 1576.

had then been established nearly three centuries[1]; and had been fortunate in a succession of eminent teachers. Bartolus, the greatest name of the "Scholastic," or second, school of Jurists, had been professor there; and was succeeded by a pupil of whom it was said:

> Qui Baldum iuris negat accendisse lucernam
> Ille potest medio sole negare diem[2].

Gentilis boasts that the honour of the Law Faculty of Perugia had been well maintained since the days of these great men, and he gives the names of his own teachers; of whom Rinaldo Rodolfini was the most famous[3].

Thanks to the industry of local archaeologists[4], we have the fullest information as to the history of the University, its statutes, and the succession of its professors. In the time of Gentili seventy doctors of law were resident in the town, of whom twenty-five gave lectures[5]. The exercises requisite to graduation were so difficult that candidates often migrated to some other University, where there was more likelihood of their passing[6].

The degree of Bachelor, and the intermediate status of licentiate, were alike unknown at Perugia. Albericus therefore, on completing his studies, became full Doctor[7],

[1] It began work in 1276, but its earliest Bull is of 1307.

[2] Bini, *Memorie istoriche della Perugina Università*, Perugia, 1816, gives medal portraits of Bartolus and Baldus; the authenticity of which is however doubted.

[3] Rodolphus, Nonius, Lancellottus, Severus, Eugenius, Galiffus. *Dialog.* I; *Laudes*, p. 15.

[4] Especially Bini, u. s.; Vermiglioli, *Bibliografia storica Perugina*, 1823; Padaletti, *Contributo alla storia*, &c., Bologna, 1872; Bonazzi, *Storia di Perugia*, 1875; Adamo Rossi, *Documenti per la storia dell' Università di Perugia*, in the *Giornale di erudizione artistica*, tt. iv–vi and ser. ii. t. ii.

[5] *Civitates Orbis*, u. s.

[6] *Laudes.* On law studies in Italian Universities generally, see the contemporary Cardinal Panciroli, *De Claris legum Interpretibus.*

[7] It appears from the archives of the University, that "Almericus" Gentilis was presented for his degree on Sept. 22, 1572, by Rinaldus

and a few months afterwards was elected "praetor," or judge, of Ascoli[1]; where his father at this time held the office of city physician[2].

For some reason or other both father and son resigned before long their respective appointments, and returned to their native San Ginesio; where they were held in much honour. Alberico was elected to the office of advocate there in 1575[3], and was employed in negotiations affecting the interests of the town, and upon a revision of its statutes[4].

The career thus opening was interrupted by a cause which broke up the whole family circle. The father, we are told, "from the reading of the divine oracles, and the "conversation of good men, obtained some taste of heavenly "truth[5];" or—as the same fact is represented from another point of view—"he was swept away by the rage of the "reformation, falsely-so-called, by which that age was "deluded."

Such a change of opinion had been by no means uncommon, especially in the higher classes of Italian society, a few years previously; but by the time of which I am speaking the Inquisition had succeeded in breaking up the little centres of Protestantism which existed, for instance, at Modena, Ferrara, and Venice; and an exodus of hundreds of thoughtful people had taken place, which has been compared in its effects

Rodolphinus, Cornelius Benicasa, and Jo. Baptista Fedelis; after disputing upon Dig. iv. 4. 6 and Cod. ii. 9. 2.

[1] Nov. 6, 1572. Entry from archives of Ascoli. Benigni, in Colucci, tom. vii.

[2] Having succeeded his brother Pancrazio in 1571. Ibid.

[3] Ibid. It is to this period of his life that Albericus Gentilis probably alludes when he mentions having been engaged in "praxis." *Dialog.* I.

[4] 1578. Benigni says that these were ungratefully published in 1582 with no mention of Gentilis.

[5] *Laudatio.*

[6] Gravier, Praef. ad *Opera* Scipionis Gentilis.

to that which followed the revocation of the Edict of Nantes.

The emigration was permanently protestantizing the Valtelline and the Engadine, but little bands of fugitives were scattered through Switzerland, Germany, and even England[1]. Matthew Gentilis found that his only chance of safety was in flight, and proposed it to his wife.

Lucretia's reply, as preserved by family tradition, was to the following effect: "I not only permit, but bid you go, "for I see your danger. As to accompanying you, pardon "me when I say I cannot do it. I am accustomed to the "air, the food, and the religion of my native land. If you "take me hence, you take me to death. Recompense my "self-denial in letting you go by consenting to my staying "behind. We shall be as devoted to one another in our "separation as we have ever been. Take Albericus with "you, but leave the younger children with me[2]."

Matthew consented, bade adieu to his wife, and set off (1579), accompanied only by Albericus, who had long shared his father's opinions. A pious fraud was, however, practised upon the mother; and the fugitives were joined, soon after leaving home, by the young Scipio, who was about sixteen years old. Lucretia not unnaturally wrote to her husband upon this subject with a certain "dulcis "amarities."

Just then, and for a few years longer, Protestantism was still tolerated in the Austrian dominions[3], and the exiles accordingly found a temporary resting-place in Carniola[4], where Matthew was honoured with the

[1] MacCrie, *Reformation in Italy;* Hallam, *Lit.* vol. ii. pp. 364, 537.

[2] *Laudatio.*

[3] Except in the Tyrol. Later, the Emperor Rodolph II rooted it out by persecution and banishment.

[4] At Laibach. A severe decree was passed against the Gentili family by their townsmen, according to Benigni, who refers to Panelli, *Medic. illustr. del Piceno*, tom. ii. p. 218. It had been condemned by the Inquisition, Feb. 2, 1581.

title of "Archiater" of the Duchy[1]. It may have been at this time that, while the three were sitting one winter evening round the fire, the father said to his sons: "Take each of you a piece of charcoal. I will give you "a sentence in prose, and do you turn it into verse, which "you can write with the charcoal on the stove." While Scipio expressed the idea in three lines, Albericus nearly covered the stove with poetry. The father encouraged Scipio to go on writing verses, but made Albericus promise to give up the practice[2].

The prosperous physician did not keep his sons with him in Carniola, but sent Scipio to pursue his studies in Germany, and Albericus to turn his learning to account in England.

A few words only can be spared to the subsequent histories of the father and the younger son. Matthew Gentilis before long found that the Austrian policy had changed. It was necessary for him "aut Romanis "placitis stare, aut migrare." He chose once more the latter alternative, and followed his eldest son to England[3]. For a long time before his death, which occurred in 1602[4], he was only able in the intervals of suffering to gratify his love of knowledge by devouring the contents of all the new books on theology, medicine, or philosophy[5].

Scipio, in the meantime, after studying at three or four Universities of the Low Countries and Germany, and

[1] *Laudatio* and Epitaph. Doubtless through the interest of his brother-in-law, Nicolo Petrelli, commandant of Trieste.

[2] *Laudatio.*

[3] *Laudatio.* See some letters of his, of 1581, in Epistles to and from John Hotoman. Cf. Prof. Comba, in the *Rivista Cristiana*, 1877.

[4] This appears from a letter of Rittershusius to Scaliger, *Sylloge Epist. viror. illustr.*, Leyden, 1727, tom. ii. p. 332. Scipio, Dedication of *De Donat.*, 1604, says his father passed twenty-two years in England.

[5] R. Gentili's Dedication of A. Gentili's *Lect. Virgilianae.*

acquiring fame not only as a jurist but also as a scholar and a poet[1], became law professor at Altdorf, where a University (since removed to Erlangen) had then recently been founded by the city of Nürnberg[2].

Here he taught for twenty-six years, first as the colleague, and then as the successor of Donellus, whose pupil he had been at Leyden, and next to whom he now lies buried at Altdorf[3].

On the occasion of his death (in 1616) an oration was delivered before the University by George Konigius, the Professor of Theology, and another a year later by Piccartus, the Professor of Logic[4].

Scipio's writings, theological, poetical[5], but chiefly legal, are very numerous; and, more than a century after his time, were so highly esteemed that it was thought worth while to publish a collected edition of them at Naples[6].

[1] After being expelled from Heidelberg, for a libel upon Pacius, he graduated in 1589 at Bâle, where he met and was complimented by F. Hotoman.

[2] The Gymnasium founded in 1571 at Altdorf, was created an Academia, with the right of creating Bachelors and Masters in Philosophy, by Rudolph II in 1580. It did not become a University, with Faculties of Law and Medicine and the power of making poets laureate, till 1623. See M. D. Omeis, *Gloria Academiae Altdorfinae*, Altdorfii, 1683. The University was in 1809 incorporated with one which had been founded in 1743 at Erlangen.

[3] In the chief church, near the altar. The epitaph is printed in G. M. Konigius, *Bibliotheca Vetus et Nova*, Altdorfii, 1678.

[4] Omeis, supra cit. pp. 47, 162; *Laudatio;* Benigni, in Colucci, tom. viii; G. Montechiari, *Elogio di Scipione Gentili*, 1813, Macerata, 1816; De Minciis, *Biografia di Scipione Gentili*, con tavola, Forli, 1840.

[5] Among the poetical works edited by Rittershusius is one on the daughter of Sir Philip Sidney, 1585. Scipio tells us, Dedication of *De Donat.*, that he had been much in England.

[6] Napoli, Gravier, 1763, 8 vols. 4to, with (apparently) a portrait. There is also a portrait in Freherus, *Theatrum Viror. Claror.*, Noribergae, 1688, p. 1004. Benigni, loc. cit., gives a list of seventy-five works by Scipio, most of them published. His MS. *Adversaria*, &c. are in the Bodleian Library. Vide infra, p. 15.

Albericus seems to have reached England in August, 1580[1]. He tells us that on his arrival nothing was further from his thoughts than to seek the society of the great; but that he was irresistibly attracted by the fame of Sir Philip Sidney[2]. He doubtless brought introductions to the little congregation of Italian Protestants worshipping in London, to which belonged, or had recently belonged, Contio (Acontius), famous as the author of the *De Stratagematibus Satanae*, Giulio Borgarucci, physician to the Earl of Leicester, and suspected of misapplying his knowledge of drugs in the Earl's service, and Battista Castiglioni, Italian master to the Queen[3]. It seems to have been through the good offices of the last named, and of Dr. Tobie Mathew, in 1579 Vice-Chancellor of Oxford (subsequently Bishop of Durham and Archbishop of York), that Albericus came to the notice of Leicester[4], Chancellor since 1564 of Oxford, and obtained from him a commendatory letter to the authorities of the University, which describes him as one who "being forced to leave his "country for religion, is desirous to be incorporat in your "University, and to bestow some time in reading and other "exercise of his profession there[5]."

In a couple of autograph letters, which I have seen[6], Gentilis thanks the Earl for this epistle, and relates its

[1] See Dedication to *Dialogi Sex*, and to *De Legationibus*. In the Bodleian MSS. he is traceable at Cologne, January 4, 1580, at Tübingen, January 27, and at Heidelberg, May 3. He also visited on the way Neustadt and Hesse.

[2] See Dedication to *De Legationibus*. He seems to have been tutor to Anthony Sherley; *Lect. and Epist.* 1583.

[3] See T. MacCrie, *Reformation in Spain*, p. 365; Strype, *Grindal*, p. 42; Gerdesius, *Scrin. Antiquar.* tom. vii. pt. 1. p. 123.

[4] Dedication *Dial. Sex;* Dedication *Disp. in I. Maccabaeorum;* Dedication *Ad Tit. de maleficiis mathematicorum*.

[5] The full text of this letter, dated Nov. 24, 1580, is printed from Register K. K., fol. 317, of the University, in the Preface to my edition of the *De Iure Belli*.

[6] See Appendix III.

results: "Cooptatus sum in collegium; publice ius civile "profiteor. Si quid valebo experiar brevi."

He was received into New Inn Hall, and was granted small stipends by Merton and other Colleges, and afterwards from the University Chest[1]. He was also incorporated D.C.L.[2]

His delight with Oxford is vividly expressed in the preface to his first book, the *Dialogi Sex*, which appeared in 1582, dedicated to Lord Leicester[3]: "Qui Oxoniam "norint et ii norint necesse est ut mecum agatur qui "Oxoniae vivo, in ea scilicet civitate quae, situs amoenitate "felicissima, magnificentissimis studiosorum collegiis, pro-"culdubio augustissima in toto orbe." He writes, "in "crudeli hoc meo exilio, si est exilium potius quam beati-"tudo persecutionem pati propter iustitiam Christi."

Henceforth almost every year of his life was marked by the appearance of a book, sometimes of several books.

In 1584 Gentilis and John Hotoman were consulted by Government as to the proper course to be pursued with Mendoza, the Spanish Ambassador, who had been detected in plotting against Elizabeth; and it was by their advice that he was merely ordered to leave the country. That the opinion given by Gentilis was the right one is now universally admitted; but it was directly in the teeth of that which had been given by the English civilians fifteen years before, in the case of Leslie, Bishop of Ross[4]. Albericus chose the topic to which his attention had

[1] Wood. He first taught at St. John's;. Dedication to *Laudes*.

[2] March 6, 158$\frac{9}{1}$. Wood, *Hist.*, Gutch, ii. pt. 1. p. 195, and *Fasti*. The decrees are in Register K. K., foll. 302, 318.

[3] For a list of the works of A. Gentilis see Appendix VIII.

[4] Albericus Gentilis, *de Legat.* lib. ii. 18; Zouche, *De Leg. Del. Iud. Comp.* p. 104; Hotoman, *L'Ambassadeur*, 1603, p. 81. Scipio says: "Coram illustrissimis regni proceribus ceteraque nobilitate disserens, "definivit (nisi me amor fallit) optimis rationibus Albericus frater "meus." *De Coniur.* p. 13. For the earlier opinion see Coke, 4 *Inst.* 153.

thus been directed [1] as the subject of a disputation [2] when Leicester and Sir Philip Sidney visited the schools at Oxford in the same year; and the disputation was six months later expanded into a book—the *De Legationibus*—dedicated to Sir Philip Sidney [3].

Gentilis was still at Oxford in the early part of 1586 [4], but in the autumn of the same year he is at Wittenberg, where he dedicates books to the Duke of Brunswick and others. He had left England, desponding probably of success in this country, with apparently no intention of returning; and by the influence of Walsingham had accompanied Horatio Pallavicino in his embassy from Elizabeth to the Elector of Saxony. It was through the same influence, even more than that of Leicester, that Gentilis was recalled from the Saxon Court in 1587, and was appointed Regius Professor at Oxford [5]. This episode in his career is disclosed in the dedication of a book, the only copy of which, so far as I am aware, is in the Library of All Souls College [6].

It was doubtless through these circumstances that Gentilis was led from his properly civilian studies to explore further the field of what we call International Law.

[1] First he says by Sidney. Dedication to *De Legationibus.*

[2] "Quaestiones ordinariae." Ibid.

[3] Wheaton, *Hist.* p. 233, wrongly supposes Gentilis to have been consulted in consequence of his book, and misunderstands his opinion.

[4] *Legal. Com. Oxon. Actio*, 1585, dedicated to G. Lloyd, Kal. Feb. 158$\frac{5}{6}$. While at Wittenberg, Alberico was present at a disputation by his brother Scipio, and procured the appointment of Giordano Bruno to a professorship there.

[5] The warrant bears date June 8, 1587. His predecessor, G. Lloyd, died in the November preceding, and in the meantime a warrant had been made out for Dr. James, of All Souls, who did not act upon it. Wood, *Hist.*, Gutch, vol. ii. p. 858.

[6] Alberici Gentilis I. C. Prof. Reg. *Disput. decas prima*, Londini, Joh. Wolfius, 1587, dedicated to Walsingham, 5 Id. Aug. 1587. Another copy is now in my possession, and Prof. Cipriani, of Perugia, has a third.

In the year following his promotion, he published the first "Commentary" of his most celebrated work, the *De Iure Belli*, a topic upon which at the "Act" of that year he had delivered an oration. The author says, "Partem iuris "nobilissimam, aliis intractatam, et plerisque omnibus "minus apertam exsequor." The second and third followed in 1589. A dedication to the new favourite, the Earl of Essex, is prefixed to each.

The three Commentaries appeared as a practically new work ten years later, with the title *De Iure Belli libri tres.* It had been vastly improved; and indeed rewritten in the interval[1].

The *De Iure Belli* was followed, as it had been preceded, by a profusion of other books, or rather pamphlets. Gentilis celebrated the two Universities with which he had been connected; he meddled with all the questions of the day—the question of remarriage, of the justifiableness of lying, of the lawfulness of stage plays, of the extent of the royal power, of the union of England and Scotland.

The last three years of his life were mainly engaged in the discharge of the office of Advocate to the Spanish Embassy ("honorifico salario constituto"), to which, with the permission of King James, he was nominated in 1605 by the Ambassador, Don Petrus de Zunica[2]. England was at that time neutral in the war which was going on between Spain and the Netherlands, and many cases in which Spaniards were interested came before the English Court of Admiralty. Gentilis must not only have been consulted on such cases, but must also have argued

[1] On the origin and editions of the book, see the Preface to my edition of 1877, and cf. infra, Appendix IV.

[2] Scipio's Dedication of the *Adv. Hispanica.* Alberico does not seem to have become, as might have been expected, a member of the College of Advocates, but was admitted, August 14, 1600, to be a member of Gray's Inn.

them; for he mentions an occasion on which, when the junior advocate and the proctor had given up a point, he insisted upon it, and brought round the judge to his opinion [1].

These forensic engagements of Gentilis explain the fact that his will was made in London [2].

His last wish was to be buried as near as possible to his father, of his affection for whom this is one among many proofs. He commends his children to the care of his brother Scipio, and begs that he will destroy all his MSS., except those relating to the Spanish advocacy, which are not in so imperfect a state as the rest. These were accordingly published by Scipio, under the title *Advocationis Hispanicae Libri duo*, in 1613. They are a very important and interesting collection of notes of cases involving the rights of belligerents and neutrals [3].

You will find it stated in Wood [4], and after him in the Biographical Dictionaries, that Gentilis died in 1611, and was probably buried in Christ Church Cathedral. Wood, however, expresses himself with some uncertainty on the point, and after looking into it carefully I have no doubt upon the evidence that he died in London, on the 19th of June, 1608, five days after the date of his will, and was buried by the side of his father [5].

[1] *Adv. Hisp.* ii. 25. In 1590 a complaint was made of some neglect on the part of the deputy of Gentilis at Oxford—Wood, *Hist.*, Gutch, ii. p. 241; and in 1609 Dr. Budden obtained a testimonial as to his having read the law lecture ever since the departure of the famous Dr. Gentilis—State Papers, Domestic, James I.

[2] Dated June 14, 1608. See Appendix V.

[3] He supports the extravagant British claims to maritime jurisdiction, lib. I. c. viii.

[4] *Athenae.* In the *History*, Gutch, ii. p. 858, he had given 1609 as the date.

[5] A letter from I. Casaubon to Scipio Gentilis, written in October, 1608, proves that Albericus died some months before that date; and leaves no doubt of the correctness of the statement in the text, which was derived from what, for aught that appears, may have been merely

By his wife, Hester de Peigne, who long survived him, he left two sons [1].

The elder, Robert, doubtless so called after his godfather [2] the Earl of Essex, was a member successively of Christ Church, Jesus, and St. John's, and eventually a Fellow of All Souls College. Albericus obtained the preferment for him only after a prolonged resistance by the college to a most unjustifiable pressure on the part of the Crown, some particulars as to which will be found in the work of my learned colleague upon the Worthies of All Souls [3]. A less objectionable, but, one would have thought, not very effectual, mode of advancing this young man's interest, to which Albericus resorted, was to allow him to dedicate several of his father's works in his own name to personages who were likely to be of use to him. Robert, however, seems to have done little credit either to his father or to his college [4]. In later life he published some translations.

The younger son, called after his grandfather Matthew, published in 1614, with a dedication to the Prince of Wales [5], a volume of annotations on the title of the Digest *De Verborum Significatione*, which he must have rescued

the draft for an epitaph, printed in G. M. Konigius' *Bibliotheca Vetus et Nova*, q.v. in Appendix VII. The true date of Gentili's death, and the place of his burial, were established beyond doubt in 1875. See Appendix VI.

[1] On the family history, see further, Appendix I.

[2] Dedication to *Laudes*.

[3] *The Worthies of All Souls*, by Montagu Burrows, Chichele Professor of Modern History, and Fellow of All Souls College. 1874. See also Wood, *Athenae;* State Papers, Domestic, James I, 1604 and 1606, and Add. MSS. Brit. Mus. 12,504, p. 147.

[4] Wood, *Athenae*. See Appendix I, and the Will of Albericus Gentilis, Appendix V. Robert, having always conversed with his father in Latin and with his mother in French, spoke both languages when seven years of age. Morhof, *Polyhistor*, lib. ii. c. 9.

[5] The dedication by Matthew must have been merely nominal, as he is now known to have been only eleven years old in 1614.

from the fate to which his father had destined his unfinished MSS.

The partial destruction of these MSS., if indeed they were even partially destroyed, though tantalizing to the collector of antiquarian gossip, is perhaps fortunate for the reputation of some of the contemporaries of Gentilis, who used to pride himself on his habit of keeping a diary, in which he entered, not only the conversations in which he took a part, but also those which he happened to overhear[1].

I have alluded to the destruction of the MSS. of Albericus with some doubt of its having taken place; for in point of fact twenty-eight volumes of note-books, written partly by Scipio and partly by Albericus Gentilis, came into the possession of the great book-collector D'Orville of Amsterdam, and were purchased from his representatives in 1804 for the Bodleian Library, where they are still preserved. I have not yet been able to make a thorough examination of their contents[2].

A few more words will complete what I have to say of the personal history of Gentilis.

There seems no reason to doubt the sincerity of his Protestantism; although he was taunted by controversial opponents with a tendency to opinions better suited to Perugia than to Oxford[3]; nor is he ever accused of Arianism, of which Italian Protestants were very generally suspected, and for which a namesake of his had suffered martyrdom[4].

[1] *Dialog.* III.

[2] On subsequent examination, I found that these volumes contain *De Verb. Significatione*, the *Advocatio Hispanica*, and several other works which have been printed, together with a mass of rough notes on Roman Law, in which are interspersed some personal memoranda.

[3] Gisb. Voet, *Pol. Eccl.* 1666, t. ii. p. 171.

[4] Giovanni Valentino Gentili di Cosenza, executed at Geneva, in 1566. It would seem, however, from notes occurring here and there

His literary activity is pardonable, if we remember tha what would now appear as an article in a magazine or review appeared in those days as a book; with all the apparatus of title-page, dedication, and commendatory verses[1]. The habit of elaborate dedication was not of course peculiar to Gentilis; though it was not so usual to attempt, as he did, to push the fortunes of a son by allowing him to dedicate his father's works in his own name.

Albericus was a civilian of the old school; the school which prided itself on its thorough, if one-sided, training; and he took an active part in the bitter controversy then raging between his masters—the "Bartolists"—and such men as Cujas and Hotoman, who—from combining the study of polite literature with that of law—were styled "Humanists," or from the founder of their method "Alciatists." In his *Six Dialogues*, published in 1582, Gentilis maintains, against the French innovators, that a jurist may despise Greek, and even get on very well without paying attention to the elegancies of Latin composition. Somewhat in the manner of Blackstone's farewell to his muse, he insists on the exacting character of legal study. Cujas had reproached the older school with being a set of sordid barbarians: "blaterones, insi- "pientes, improbi, avari." Gentilis retorts by refusing to Alciatus and Cujas the title of jurists, which they were too ambitious of universal culture to qualify themselves for deserving[2]. While he does not deny that their books

in the Bodleian MSS., that Alberico, about 1593, had to defend himself against the charge of being an "Italus Atheus."

[1] In the dedication to *De Diversorum Temporum Appellationibus*, 1586, he complains of the loss of many volumes of his MSS.!

[2] So the admirers of Socinus used to congratulate themselves that he had never, like Alciatus, wasted his time in the study of polite literature.

are worth dipping into, his advice to the student is to "visit these moderns, but to dwell with the ancients." He confesses that he has not had time to read much of their writings; he has been too busy with his pupils; who, under the guidance of Griffin Lloyd, the Regius Professor[1], are more intent upon a solid knowledge of law than upon the elegancies of the new literature. The Latin style of Gentilis himself, without the least attempt at being Ciceronian, flows with an ease which often runs into carelessness. He is also fully equipped, one should perhaps rather say burdened, with such classical illustration as has to do with his subject. The views maintained in the *Six Dialogues* are so extreme that it has been suggested that they are intended as a satire[2]. This I believe to be a mistake. The idolatrous admiration of Gentilis for the older jurists may be amply proved from his other writings[3].

There can be no doubt that the teaching of Gentilis, coming as he did direct from the original seat of civilian study, and bringing with him traditions handed down from master to pupil in unbroken series since the days of Irnerius, must have done much to revive the interest felt in Roman law.

The study of it had reached a very low ebb at Oxford by the middle of the sixteenth century. Thus we learn

[1] Albericus Gentilis always speaks of him with respect. In the *De Legationibus* he mentions that Griffin Lloyd had suggested to him a view of the "iudex competens." In 1586 he dedicates to him the *Legalium Comitiorum Oxoniensium Actio.*

[2] Tiraboschi, tom. vii. p. 735. Cf. Hofmann in his preface to Panciroli, sup. cit.

[3] E.g. the abuse of Cujas in the *Lectiones et Epistolae*, 1583, pp. 92, 117. As a specimen of the style in which Gentilis is spoken of by the other party, take the following:—"O egregius rerum "absurdarum magister! O peritissimus artifex ineptiarum, quid "miselli hominis Cuiacium impetit! Quam exiguum animal tam "magnanimo insidiatur Leoni!" Ianuarii *Respublica Iurisconsultorum*, Neapoli, 1731, p. 208.

from Wood that "The civil and canon laws were almost "extinct, and few or none there were that took degrees "in them, occasioned mainly by the decay of the Church "and power of the Bishops[1]." And Ayliffe says: "The "books of the civil and canon law were set aside to be "devoured with worms, as savouring too much of Popery[2]."

It is certain that from the time of Gentilis there was a reaction. A contemporary speaks of him as one "who "by his great industrie hath quickened the dead bodie "o the civill law written by the auncient civilians[3]"; nor can it be an accident that, in the generation which must have felt his influence, Oxford produced two such authorities on Roman law as Arthur Duck and Richard Zouche.

The promotion of Gentilis to an Oxford Chair was by no means an isolated fact. A number of foreigners were engaged in teaching here at the same time[4]. When one considers what must have been the difficulty and expense of travelling, one is surprised to find how usual it then was for students to move from one country to another. It must however be remembered that at a time when all lectures were delivered and all exercises performed in Latin, a scholar was equally at home in any University. He passed from one end of Europe to another as easily as a German youth now migrates from Berlin to Heidelberg. In several of the Continental Universities there were English "nations"; and English coats of arms adorn the halls of seats of learning as wide apart as Louvain and Bologna[5].

[1] Wood, *Hist.*, Gutch, vol. ii. bk. i. s. lxxix.

[2] Ayliffe, *Antient and Present State of the University of Oxford*, i. p. 188.

[3] W. Fulbecke, *Direction or Preparation to the Study of the Law*, 1599, c. iii.

[4] See Wood, *Hist.*, Gutch, vol. ii. p. 195.

[5] The introduction of the new linguistic studies, especially at Christ Church and Corpus, by Wolsey and Fox, had been accompanied by a large importation of foreigners.

A special cause contributed also to the circulation of learning in the sixteenth century. The religious troubles which banished many an Oxford Fellow to Douay or St. Omer, brought many refugee scholars to Oxford, which, at that time ostentatiously Puritan, received them with every encouragement, often conferring degrees upon such as were believed to be sound in point of orthodoxy. Thus John Hotomann, a son of the more celebrated Francis Hotomann, was incorporated from the University of Valence D.C.L. on the same day with Gentilis; but shortly afterwards, when John Keeper, M.A. of Louvain, supplicated to be similarly received, he was set aside, because suspected of being a papist[1]. Leicester, the Chancellor, consistently favoured the Puritan party, and, in spite of the Queen's leaning the other way, managed to put them into all posts of importance. Whatever may have been the real motives which prompted the Earl's University policy[2], we may at least be grateful to him for having zealously checked academical abuses[3], and for having set up a printing press here at his own expense[4]. The fact that there was no press at Oxford when Gentilis first resided in the University accounts for most of his books having been printed in London or on the continent.

The brief sketch which I have attempted of the career of Albericus Gentilis, and of the circumstances under

[1] Wood, *Fasti*, 1580.

[2] Huber, *Englische Universitäten*, accuses him of using the University as a mere tool, of favouring the Puritans on account of their connexion with the Netherlands, and of poisoning the moral tone of Oxford by an enforced hypocrisy.

[3] E.g. in 1582. Wood, *Hist.*

[4] Books were printed at Oxford from 1478 to 1486, and from 1517 to 1519, after which there was no press at work till 1585. Cotton, *Typographical Gazetteer*; F. Madan, *The Early Oxford Press*, 1895, Oxf. Hist. Society, vol. 29.

which he became an Oxford Professor, may perhaps assist us in estimating the debt which is owed to him by International Law; though this is a question into the whole length and breadth of which it is impossible for me to enter to-day.

The recognition and development of rules by which the intercourse of States might be governed was rendered necessary at the close of the Middle Ages by the discovery of new portions of the globe, and by the emancipation of the several States of Europe from the tutelage of the Pope and the Emperor.

It was rendered possible, by the common Christianity which for so many centuries had influenced the opinions held in all those States alike, by the wide-spread recognition of the Roman law, by the identical needs which were finding their satisfaction in a rapidly growing commerce, and, in a less degree, by the revelation of the old classical civilization.

Two attempts were made to answer the questions which arose in the sixteenth century. On the one side, a series of Catholic casuists, amongst whom Victoria and Soto were the most eminent, give such answers to these questions as they can deduce, by a cautious exercise of original thought, from the fathers of the Church and from the civil and canon laws[1]. They are, with hardly an exception, theologians; often Dominicans. Their style is scholastic, with little trace of the influence of the new studies. They are immethodical, introducing general principles rather by way of aphorism than as governing subordinate rules. The Catholic attempt ended where it began, in a slight development of casuistry. On the other side, a long series of Protestant writers have succeeded in extricating from theology, and, to a certain extent, from ethics, the rules which are accepted as binding between State and State.

[1] Especially in the *Decretum Gratiani*, Pars. ii. causa 23, *De re Militari et de Bello.*

The foundations of the new science, which could no longer be safely laid in the consensus of a united Christendom, were placed by them on a "Law of Nature," about the precise character of which much was written in the early stages of the science which would probably now be considered superfluous.

The "Ius naturae" was investigated in the first half of the sixteenth century chiefly for its own sake, as a branch of speculative law, by such men as Oldendorp and Hemming [1], with far greater independence and with much more literary style than had characterized the Catholic theologians when touching on legal theory. It was left for Gentilis, starting from the doctrine of Natural Law as thus elaborated, to give it a practical application to the development of a Law of Nations. In the path thus opened up, Grotius followed; and after him have come the whole series of writers on International Law [2].

The three works of Gentilis directly bearing on the subject are the *De Legationibus*, the *De Iure Belli*, and the *Advocatio Hispanica* [3].

The first of these treats of a portion of the subject which had been already more thoroughly explored than any

[1] See Von Kaltenborn, *Vorläufer des H. Grotius*, and *Kritik des Völkerrechts*. Also Thiercelin, in the *Revue Critique de législation et de jurisprudence*, tom. xiv.

[2] "Le traité de Gentilis serait encore regardé comme un chef-"d'œuvre de l'esprit humain, s'il n'avait donné naissance au traité "du droit de la guerre et de la paix de Grotius." Hautefeuille, *Hist. Droit marit.* p. 268. For some other modern testimonies to the merit of Albericus, see Lampredi, *Del Commercio dei Popoli neutrali*, pref.; Reddie, *Researches*, i. p. 103; Cauchy, *Droit. marit.* ii. p. 33; Sclopis, *Législ. Italienne*, vol. ii. p. 557; Pierantoni, *Storia*, c. vii.

[3] The *De Armis Romanorum* is a minor work of the same character. A full analysis and impartial estimate of these works is contained in a treatise by Dr. Reiger, *De Alberico Gentili Grotio ad condendam Iuris gentium Disciplinam viam preeunte*, annexed to the *Programma van het stedelijk Gymnasium te Groningen*, for 1867-8, which was only obtained for me after these pages were first in type.

other. The last is necessarily of a technical nature, dealing mainly with rules of Roman law and with historical precedents; though there is a passage on the pretensions of neutrals expressed with a force and clearness which have never been surpassed: "Ius commerciorum," he says, "aequum est, at hoc aequius, tuendae salutis. Est "illud gentium ius, hoc Naturae est. Est illud privatorum, "est hoc regnorum. Cedat igitur regno mercatura, homo "naturae, pecunia vitae." He is discussing the Dutch claim to trade freely with Spain while at war with England [1].

The *De Iure Belli* is more original than either of these. In it Gentilis combines for the first time the practical discussions of the Catholic theologians with the theory of natural law which had been mainly worked out by the Protestants. His idea of what he calls the "Philosophy "of War" is that it belongs to the great commonwealth of mankind: "Non unius est reipublicae sed omnium." It therefore does not belong to the "political philosopher," who, according to Aristotle, is unconcerned with injustice occurring beyond the limits of his own State, but to the "bellicus," by whom Albericus means the International lawyer.

The older school of jurists had been blamed for introducing too much civil law into such discussions. Albericus accuses those persons who make this charge, i. e. Bodin and Faber, in their turn, of relying too much on the "nuda historiarum recitatio." "Exempla et facta," he says, "expendenda sunt sua lance [2]." So he says elsewhere: "Facta nos non quaerimus, aut ex factis ius con-"stituimus, sed ex iure examinamus facta [3]." The test is the "Ius Gentium, quod est naturae," and this he defines, in a strain of unimpeachable orthodoxy, as "particula "divini iuris quam Deus nobis post peccatum reliquam

[1] Lib. i. c. 21. [2] Ib. c. 1. [3] Ib. c. 20.

"fecit." It can only be discerned "inter tenebras multas"; "Sed non propterea quod latet in profundo veritas nulla "est." It is what all nations agree upon, or rather the "maior pars orbis."

He assumes the existence of Natural Law, as having been already established. As to its contents and application there are the widest differences of opinion, not only among the vulgar, but also among jurists. He says that, except the treatise of Lignanus[1], and scattered passages in the writings of others, he has read nothing upon the subject; and he complains much of the quality of all that he has read.

These three books of the *De Iure Belli* of Gentili supply the model and framework of the first and third books of Grotius; and it may be questioned whether the matter of Grotius' second book is not too important to be fitly introduced as a mere digression in a treatise on belligerent rights.

I am by no means concerned to place Gentilis on a level with his undeniably greater follower; or to say that his writings do not exhibit, in some degree, the faults with which they have been charged. My object has been merely to call attention to a too much forgotten reputation; and to remind you that the first step towards making International Law what it is, was taken, not by Grotius, but by the Perugian refugee, the adopted son of Oxford, Albericus Gentilis.

[1] i.e. Ioannes de Lignano, as to whom, v. infra, p. 44.

APPENDIX

No. I.

THE GENTILI FAMILY.

THE Gentili Rossi bore for arms "un Saracino colla benda "rossa in su gli occhi." In those of the Gentili Bianchi the fillet was white.

The name had been for many generations eminent in public employment, law, and medicine. Albericus, in the *Laudes*, describes himself as one "cui pater, frater, patruus, patruelis, "duo avunculi, iidemque agnati, maioresque avunculi duo, atavi "duo, doctores numerantur."

MATTEO GENTILI, a physician, had a son—

LUCENTINO, who had, by Clarice Mattheuci, (1) Vincenzo, (2) Pietro, (3) Gregorio, (4) Pancrazio (physician at Ascoli), and (5) Matteo. This

MATTEO, born 1517, married 1549 Lucrezia (ob. 1591), daughter of Diodoro Petrelli, and by her had (1) Alberico, (2) Manilio, (3) Antonio, (4) Vincenzo, (5) Quinto, who studied at Padua and is an interlocutor in the *Dialogi Sex*, (6) Scipio, (7) Nevida, who married in 1573 Venanzio di Ottaviano Bevilacqua.

ALBERICO married, about 1589, Hester de Peigni, or Peigne, of French extraction, whose sister, Jael, was married, Nov. 7, 1590, at St. Peter le Poor's Church, to Sir Henry Killigrew. She was in Paris, carrying on an unsuccessful lawsuit before Achille D'Arblay, first President of the Parliament, in 1608, and, on appeal, before De Thou, in 1610. She died at Rickmansworth, Herts, in 1648.

Their children were:

(1) Robert, born Sept. 11, 1590; matriculated at Christ Church aet. 9; B.A. Jesus College, 1603; sometime of St. John's College; Probationer Fellow of All Souls, in 1607, though statutably disqualified, as not having completed his seventeenth year, on the nomination of the Visitor; the father's solicitations, backed by royal letters, having failed to procure his election by the College (Add. MS. Brit. Mus. 12,504, p. 147). He bitterly disappointed the expectations of his parents (see their respective wills), justified by his early precocity, as also of his uncle, Scipio, to whom, in 1609, he paid a visit at Altdorf (I. Casaubon, *Epistolae*, 636, 644). In 1612 he took the degree of B.C.L., but had to resign his Fellowship, and disappears from view. His return to England in 1637, although he was said to be then "multum reformatus," caused his mother to revoke a legacy left to him on condition of his remaining abroad. In the following year he married, at St. Bride's, Fleet Street, Mary, widow of Richard Simpson. His subsequent career is traceable only by a series of Translations, all executed by him for Humphrey Mosely, of St. Paul's Churchyard, viz.—

From Italian:

The History of the Inquisition, by Paul Servita. London, 1639, 4to.

The Success and Chief Events of the Monarchy of Spaine, by Malvezzi. London, 1647, 12mo.

Considerations on the Lives of Alcibiades and Coriolanus, by Malvezzi. London, 1650, 12mo.

From French:

Le chemin abrégé, or, A Compendious Method for Attaining of Sciences. London, 1654, 8vo.

From Spanish:

The Antipathy between the French and Spaniard. London, 1642, 12mo.

From Latin:

The Natural and Experimental Historie of Winds, &c., by Francis Lord Verulam. London, 1653, 12mo.

(2) Anna, born 1595, died 1597.

(3) Anna, born 1598, married 1633 Sir John Colt of Woodoaks Manor, Herts. Their son John had a daughter and

heiress, Gentilis Colt, who married in 1669 Sir Benjamin Tichborne of Aldershot, Hants.

(4) Hester, born 1602.

(5) Matthew, born Nov. 27, 1603, at St. Helen's, London; in 1614 dedicates his father's *De Verborum Significatione*; admitted 1621 (as aet. 13!) scholar of Winchester College. His whereabouts was unknown to his mother when she made her will in 1632.

In one of the D'Orville MSS. (612) Alberico makes the following entries:—

D. O. M.

Gratiae finis libri 7 et ult., cons. Alexandri.

Die ult. sept. 1590.

Hoc anno, die sept. 11, hora prope 11, Londini, primogenitus mihi natus. Baptizatus in peregrina illa Gallica ecclesia die 28 die dominica, in edicone pomeridiana, a ministro Fontana, susceptoribus Roberto Essexio Comite, per Thom. Sherlie Eq. et Hen. Killigrew, Anglis, et Iaele de Peigne, Galla, filii nom. Roberti, D. B.

Die ultima martii hora pom. quarta 1595 nata Anna, bapt. in Gallica ecclesia a ministro Capello die aprilis domenico secundo in edicone pomerid. me suscipiente pro fratre Scipione et illustri Anna Palavicina, quae nomen contulit. D. B. Obiit Iulii mense, anno 97.

Die 25 sept. 1598 Anna secunda nata, bapt. in eccl. Gallica peregrina Londini, Castollo ministro, me patre susceptore. D. B.

Die 2 febr. 1601 Esther nata, bapt. in eccl. paroch. stae. Helenae in via episcopi. D. B.

Die 27 nov. 1603 illico post mediam noctem natus Mathaeus, bapt. Londini, in eccl. paroch. stae. Helènae. D. B.

Scipio married in 1612 Magdalen, daughter of Caesar Calandrinus, on which occasion a collection of poetry was published, q. v. in his *Opera omnia*, t. viii. p. 117, and had issue (1) Aegidius Albericus, who studied at Amberg in the Upper Palatinate, and in 1618, when only five years old, was the nominal dedicator of his father's Commentary on the Epistle to Philemon. In 1635 G. I. Voss (*Epistolae*, Nos. 266, 267) endeavoured to induce Laud to provide for him in an English College. (2) Esther Magdalena. J. H. De Ruyter, in reprint-

ing Scipio's Commentary on the Epistle to Philemon in 1773, says that Voss's letters contain the latest mention of the descendants of Scipio.

The MS. in the library of Corpus Christi College, cccxvi. 68, described as "a pedigree of the family of Gentilis," is unimportant and inaccurate.

No. II.

DATE OF BIRTH.

The epitaph (Appendix VII) implies that Alberico was born in 1551, and the same, or even an earlier, date is suggested by the fact that a legacy was left "Almerico et Manilio filiis "D. Matthaei Gentilis," by Clemenzia Cerro, whose will was proved at San Ginesio, June 12, 1551 (Benigni in Colucci VII). On the other hand, the following entry in Alberico's own handwriting, found by me in the D'Orville MSS. (609), seems to leave little doubt that he was born a year later:—

Dies nunc est decimus quartus ianuarii 1582, hora noctis inter octavam et nonam. Hoc est hora quarta noctis ex more Italico, et ita annus trigesimus abiit ab hora nativitatis meae, nam illa fuit ann. 1552 die 14 ian. hora 4 noc.

Gratias ago tibi, Pater eterne, quod ortum dederis ex optimis nec non claris parentibus in Italia, Sanginesii oppidi non obscuri Picenorum. Gratias ago quod foveris, nutrieris, iuveris, gratia, dignitate, honoribus et aliis bonis insigniveris. Gratias ago pro omnibus, eo magis quo minus omnino sum meritus. Sed quid omnia ista cum misericordia revelati Evangelî in mediis tenebris Antichristi? Video, Pater, quot irretitum laqueis tu me, nullis viribus hominem, ab ea servitute liberaveris. Si illecebras Italiae considero, si mea studia considero, heu quomodo nunc potuerim tecum esse? Italiam patriam, matrem illam, illam sororem, ne fratres, ne reliquos cognatos, ne tot amicos, tot patronos dicam, debuissem relinquere, et in exteras, longinquas, regiones peregrinari.

Et qua, Pater, ratione motus? quod cuncta nihil essent prae regno tuo. Sed unde id cognovi miser? ex iure civili? At noverim primum hoc: tamen Romana ecclesia num hostium tuorum regnum? Hostium tuorum regnum, Pater, tu rem tan-

tam coeco revelabas mihi. O altitudo beneficii Dei Patris. Pro hoc tibi gratias ago, Pater, quam maximas. Quot gradibus numerisque beneficium istud reliqua superat, superat autem innumeris, eo tibi maiores gratias ago pro ipso uno. At perfice etiam sanctissimum hoc opus tuum in me. Auge mihi fidem. Operare in electo tuo opera iustitiae. Confirma me adversus Diaboli et primogeniti sui Papae Romani machinas. Da tandem quod bonum est: quo in hac vita cum tuis in ecclesia tua sancta sancte vivere possim, et inde ad te venire, per illum Iesum, filium tuum redemptorem meum. Amen.

The date 1552 is also supported by the statement in the *Laudes* that the author when, on September 23, 1572, he took his degree at Perugia, was in his twenty-first year.

No. III.

LETTERS TO THE SECRETARY OF LORD LEICESTER.

The following letters, in the handwriting of Gentilis, are in State Papers, Domestic, Eliz., vols. 144, 147.

Scripsi iam ad illustrissimum Comitem, et credo redditas ipsi a domino Baptista Casselliano litteras meas: dixi illi, que sue commendationis vis fuit, exceptum me hic perhumaniter, et sperare etiam ab ista Academia omnia que homini exuli satis et super esse possunt. Ego et ad te virum humanissimum scripta nolo: me tibi gratum esse summopere cupio, et idcirco peto. Interim vale. Oxon. v. Kal. Ian. [i. e. Dec. 28, 1580].

Servitor

ALBERICUS GENTILIS Italus.

Excipias paucis obsecro que ad illustrissimum Comitem eram scripturus, sed nolui, ne tantum virum saepius litteris meis compellarem. Littere sue commendatitie ita me comm [. . . ut?] habeam iam quod per eas petieram. Cooptatus sum in collegium; publice ius civile profiteor. Si quid valebo, experiar brevi; et inde mihi consilium sumam, an adhuc favorem et studium rogem a Comite, quare et cum tanto honore conditionem aliquam possim obtinere hic, qua vivam. Interim vale mi D. Hati. Generosissimam manum illustris

Comitis meo nomine exoscularis et ipsi Deus opt. max. ad vota omnia largiatur. Dat. Oxoniae, iv. Kal. Febr. [i.e. Jan. 27, 1581].

Servitor

ALBERICUS GENTILIS [Italus].

No. IV.

The autograph of the following letter was kindly presented to me in 1878 by John Mullings, Esq., of Cirencester, in whose family it had been preserved. It was first printed in the preface to my edition of the *De Iure Belli*, as throwing light upon the origin of that work.

Commodum (mi Benette) accepi litteras tuas: nam Alberici oblitum te, notarium, cancellarium, patremfamilias (et quid non?) suspicari cogebar: itaque binas ad te eodem opinor tempore dedi, quibus refricarem memoriam eius hominis qui visus aliquando est fuisse tibi mutuo carus. Iam video, non opus admonitione fuisse, teque absentem et multiplici negotiorum genere obrutum, certe distentum et impeditum, servare tamen benevolentiam erga me, et retinere memoriam pristinae consuetudinis et familiaritatis. Hoc age, quod agis, nam si mihi impetrabis quod petimus, idque certum, idque mihi, non posteris meis, obventurum, dices amico gratissimo te prospexisse, et curasse bene. Nunc (quando et hoc scire cupis) paramus nos ad Comitia, in quibus creditur scilicet non staturos nisi Iamesium et Byrdum meos; *sic ut in me iterum onus totum istius recidat actionis.* Rogas, si sim ferendo? at enitar, quantum in me est, et spero feram: itaque et invito te auditorem et spectatorem. Veni. Ne time Bertas, et Adamum nubentem iterum, aut Lantarum rursus doctoratum, aut eius generis leguleiorum nugas et meras tricas: habebis enim in *Vesperiis tractationem a me de iure belli, audiesque de caussis belli suscipiendi, de rationibus gerendi, de iure victorum et devictorum.* Audies in controversiam revocari (dum disputabitur) civile ius Romanorum: in bonorum interdictione, in quaestione hominis liberi, in querela inofficiosi: sed et si uxor teneatur sequi virum exulantem, si patrem exulem interficiens est parricida, si propter dotem a socero non solutam domo uxor pellitur, mihi cum filiis illis meis controvertetur.

An ista leguleiorum tuisque indigna videntur auribus? non videntur: multo igitur minus illa quae in Comitiis, respondente Sando. *Bellum an possit iustum utrinque esse: an in bellis civilibus ius maneat legationum: an subditus principi religionis a sua diversae militare debeat contra principem religionis suae*: id est an papista contra Papam recte reginae principi suae militet. Ergo Benette veni, vel ut nos audias, quorum e numero et tu es. Veni et vale. Oxon. die ult. Iunii 1588.

ALB. TUUS.

JO. BENETTO.
amico carissimo.

No. V.

ALBERICUS GENTILIS' WILL.

Extracted from the Principal Registry of Her Majesty's Court of Probate

IN THE PREROGATIVE COURT OF CANTERBURY.

Translated out of Italian.

In the Name of God. The 14th of June 1608 in London. O Lord Jesu looke vppon me and it sufficeth. I doe will my body to be buried in the place and in such manner as my father's was, as deepe and as neare to him as maye be. I doe leave my wyfe Executrix or (as I will not saye) I doe leave my syster[1] Executrix concerninge my small substance. There canne be no question betweene my wyfe and my children aboute the same bycause the Contracts are to cleare. And therefore I will that my wyfe be Mistris of myne for shee will well knowe howe to dispose boath of hers and myne, which I doe leave her for the benefitt of those my three litle ones. The first hath hadd to much, and yett hath to muche to mayntayne himselfe. If he will I doe forgive him all faltes which he hath comitted against me since he was borne. And I doe pardon him as I desire God to pardon him and as I praye God to pardon me. I doe not thincke that he will desire one fardinge of myne and I hope that my death will cause him to remember himselfe. I desyre my good brother that yf he will have care of

[1] Jael Killigrew is probably meant.

my children (as I hope he will) to have a care of these three, especially of the boye, bycause he beares the name of my father. All my bookes written w^th^ my hand my said brother shall cause to be burnte bycause they are to much imperfecte, onely the Spanish bookes ad Vocationis, whiche yf they be not verye perfecte, he my said brother maye withowte necessary trouble mende them. I Alberico Gentili didd endite and examine itt and found itt all well and the dismission of the Executrix. I Phillipp Burlamachi didd wryte the premisses w^th^ my hand, Mr. Doctor Alberico Gentili enditinge the same, he beinge sounde of memory and of very good knowledge of every one, this fourteenth daye of June A^o^ 1608 aforesaid. Subscribed Phillip Burlamachi, Baldwin Hamens, M.D., Phillipp Calandrini. The interlyninge on the other syde of leavinge his wyfe soly or his syster Executrix I doe testifie to have written as the said M^r^ Doctor didd indite itt in manner aforesaid. Subscribed Phillip Burlamachi, Phillip Callandrini, Aron Cappel, Abraham Aurelius, Joseph Killigrew, Christopher Lewen, Cuthbert Renols. This presente translac̃on doeth in substance agree w^th^ his orriginall. Ita attestor—Iohañes Kinans, Not. Pub. 1616.

> Probatum fuit Testamentum Suprascriptum apud London Coram Venerabili Viro Domino Iohanne Benet milite et legum Doctore Curie Prerogatiue Cantuar Mag̃ro custode siue Comissario legitime Constituto Duodecimo Die mensis Decembris Anno Domini Millesimo Sexcentesimo Decimo sexto Iuramento Relicte dicti defuncti et Executricis in eodem Testamento nominat Cui Com̃issa fuit Administrac̃o bonorum Iurium et Creditorum dicti defuncti De bene et fideliter Administrando &c. Ad Sancta Dei Evangelia Iurat.

No. VI.

DATE OF DEATH AND PLACE OF BURIAL.

A question inserted in *Notes and Queries*, June 26, 1875, brought a reply from the late Colonel Chester, whose unrivalled knowledge of London Registers enabled him at once to refer

me to the books of St. Helen's, Bishopsgate, which contain the following entries:—

"Mathew Gentyle physition was buryed the iiiith daie of June "a^{o} dni 1602."

"Alberick Gentile doctor of the Civill Lawes was buried the "xxith daie of June anno dni 1608."

From other entries, copied in 1875 by the late Vicar, but in 1897 no longer to be traced, it appeared that the burial of Matthew Gentili took place in the churchyard, just opposite to the gooseberry bush, at a distance from it of 14 feet; and that Alberico Gentili was also buried in the churchyard, where the gooseberry bush had stood, and 2 feet from the grate.

These interments are now covered by the buildings of St. Helen's Place. Their exact position is determined by the mention of the "grate," i. e. nun's grating, above which accordingly, on the interior wall of the church, the memorial tablet was placed in 1877. See App. IX.

No. VII.

THE EPITAPH.

G. M. Konigius, Librarian of the University of Altdorf (son of G. Konigius, who made the oration in honour of Scipio Gentilis), in his *Bibliotheca Vetus et Nova,* Altdorfii, 1678, s.v. "Albericus Gentilis," says: Epitaphium eius tale circumfertur:—

D. O. M. S. ALBERICO GENTILI ICTO CLARA ATQUE PRAESTANTI FAMILIA IN PROVINC. ANCONITAN. NATO . ANNO AET. XXI DOCTURAE ORNAMENTA PERUSII ADEPTO . PAULOQUE POST IN NOBILISSIMA ITAL. CIVITATE ASCULO IUDICI . ALIISQVE HONORIBUS MAGNA LAUDE PERFUNCTO . POSTREMO REGIAE ACAD. OXONIENSIS PER XXVI ANNOS LEGUM PROFESSORI . PLURIMIS EDITIS INGENII MONUMENTIS . CELEBERRIMO OPTIMEQUE DE REP . MERITO . REGIAE CATHOLICAE HISPAN. MAIESTATIS SUBDITORUM CONSTITUTO (OB EXIMIAM VIRTUTEM ET DOCTRINAM) ADVOCATO IN ANGLIA PERPETUO . HOC IN LOCO UNA CUM OPTIMO ET CLARISSIMO PATRE D. MATHAEO GENTILI . CARNIOLAE DUCATUS ARCHIATRO . FILIOLAQVE DULCISSIMA IN CHRISTO IESV REQVIESCENTI . H. M. S. ESTHERA GENTILIS DE PEIGNI MAR. OPT. CHARISS. ET HONORATISS. OBIIT LONDINI ANNO MDCVIII. D. XIX IUNII . AETATIS LVIII.

No. VIII.

A LIST OF THE WRITINGS OF ALBERICUS GENTILIS.

1. *De Iuris Interpretibus Dialogi Sex.* Londini, Wolfius, 1582, (4to. Dedic. 10 Kal. Oct. 1582 to the Earl of Leicester.)
   Reprinted, Londini, 1584 and 1585, 8vo, and in Panciroli, &c., *De Claris Leg. Interpr.*, Lipsiae, 1721, 4to.
2. *Lectionum et Epistolarum quae ad Ius Civile pertinent, Libri I–IV.* Londini, Wolfius, 1583–7, 8vo. (Dedic. 1583 to Thomas Hennigius.)
3. *De Legationibus Libri III.* Londini, Wolfius (also Vautrollerius), 1585, 4to. (Dedic. 12 Kal. Aug. 1585 to Sir Philip Sidney.)
   ——— Hanov., 1594 and 1607, 8vo.
4. *Legalium Comitiorum Oxoniensium Actio.* Londini, Wolfius, 1585, 8vo. (Dedic. at Oxford 10 Kal. Feb. 158$\frac{5}{6}$ to Griffin Lloyd, Prof. Reg.)
5. *De diversis Temp. Appellationibus.*
   ——— Wittebergae, 1586, 8vo. (Dedic. 12 Kal. Oct. 1586 to Dukes of Brunswick and Luneburg.)
   ——— Hanov., 1604, 4to.
   ——— ——— 1607, 8vo.
   ——— Wittebergae, 1646, 8vo.
6. *De Nascendi Tempore Disputatio.* Wittebergae, 1586, 8vo. (Dedic. at Wittenberg Id. Oct. 1586 to I. Hartman ab Erffa.)
7. *Disputationum Decas Prima.* Londini, Wolfius, 1587, 8vo. (Dedic. 5 Id. Aug. 1587 to Walsingham.)
8. *Conditionum Liber Singularis.* Londini, Wolfius, 1587, 8vo. (Dedic. Kal. Oct. 1587 to John Pierce, Bishop of Salisbury.)
   ——— Londini, Wolfius, 1588, 4to.
9. *De Iure Belli Commentatio Prima.* Londini, Wolfius, 1588, 4to. (Dedic. 3 Non. Oct. 1588 to Earl of Essex.)
   ——— *Secunda,* 158$\frac{3}{9}$. Ibid. (Dedic. 4 Kal. Jan. 158$\frac{8}{9}$ to same.)
   ——— *Tertia,* 1589. Ibid. (Dedic. Kal. Sept. 1589 to same.)

De Iure Belli Commentationes I et II. Lugd. Bat., 1589, 4to.
——— ——— *Tres.* Londini, Wolfius, 1589.
——— *Libri tres.* Hanov., 1598, 1604, 1612, 8vo.
——— ——— ——— Oxon. ed. T. E. Holland, 1877, 4to.

10. *De Iniustitia Bellica Romanorum Actio.* Oxon., Barnes, 1590, 4to. (Dedic. to Earl of Essex.)

11. *Ad tit. de Malef. et Math., item ad tit. de Prof. et Med.* Hanov., 1593 and 1604, 8vo. (Dedic. 1593 to Tobie Mathew.)

12. *De Armis Romanis et Iniustitia Bellica Romanorum Libri II.* Hanov., 1599 and 1612, 8vo. (Dedic. to Earl of Essex.) Printed also, merely as by A. G., in Poleni *Thesaur. Antiq.*, tom. i. p. 1205, ed. Venet. 1737.

13. *De Actoribus et de Abusu Mendacii Disp. Duae.* 1599, 8vo. (Dedic. 1597 to Dr. Tobie Mathew.) (The *De Actoribus* is printed in Gronovii *Thesaur. Antiquit.* vol. viii.)

14. *De Ludis Scenicis Epistolae Duae.* Dated 1593. Middelbergi, 1600, 4to. (Appended to *The Overthrow of Stage Plays.* Middleburg, 1599, and Oxford, 1629.)

15. *Ad I Maccabaeorum Disp.* Franc., 1600, 4to. (Dedic. to Dr. Mathew, Bishop of Durham.)

16. *De Nuptiis, Libri VII.* Hanov., 1601 and 1614, 8vo. (Dedic. Kal. Aug. 1600 to Lord C. Egerton.)

17. *Lectiones Virgilianae.* Hanov., 1603 and 1604, 8vo. (Dedic. 11 Sept. 1603 by Robert to Matthew Gentilis, his grandfather.)

18. *De libro Pyano ad Io. Howsonum Epistola.* (Dated 1603.) Oxon., Barnes, 1604. In Howson's *Theseos defensio*, Oxon., 1606.

19. *Ad I Maccabaeorum Disp., et de Linguarum Mistura.* Londini, Wolfius, 1604. (Dedic. at London to Drusius.)

20. *De si quis Principi et ad Leg. Iul. Disp.* Hanov., 1604 and 1607, 8vo.

21. *De Latinitate Vet. Bibl. vers. male accusata.* Hanov., 1604, 8vo.

22. *Laudes Academiae Perusinae et Oxon.* Hanov., 1605, 8vo. (Dedic. 1604 by R. Gentilis to Dr. Hutchinson, President of St. John's College.)

23. *De Unione Angliae et Scotiae Discursus.* Londini, Wolfius, 1605, 8vo ; and Helmstadii, 1664, 4to.

24. *Disputationes Tres,* (1) *de libris Iuris Can.,* (2) *de libris Iuris Civ.,* (3) *de Latinitate Vet. Bibl., &c.* Hanov., 1605, 8vo ; and Helmstadii, 1674, 4to. (Dedic. by R. Gentilis, 1605, to Dr. Singleton, Principal of Brasenose, Dr. Bond, President of Magdalen, and Dr. Howson.)

25. *Regales Disputationes,* (1) *de pot. Regis absol.,* (2) *de Unione Regnorum, &c.,* (3) *de vi Civium in Regem, &c.* Londini, Vautrollerius, 1605, fol. et 4to. (Dedic, by Robert Gentilis to King James) ; and Hanov., 1605, 8vo.

(*England's Monarch,* London, 1644, is a refutation of the "false principles and insinuating flatteries" of this work.)

26. *Hispanicae Advocationis Libri Duo.* Hanov. and Franc., 1613, 4to. (Dedic. by Scipio Gentilis to Zunica.) Amstelodami, 1661 and 1664, 8vo.

27. *In tit. de Verborum Significatione.* Hanov., 1614, 4to. (Dedic. by Matthew Gentilis to the Prince of Wales. The MS. in Bodleian Library is dated Sept. 29, 1581.)

28. *De Legatis in Testamento.* Amstelodami, 1661, 8vo.

Alberici Gentilis I. C. Prof. Reg. *Opera Omnia in plures tomos distributa,* Neapoli, ex typogr. Io. Gravier, 1770, 4to, was interrupted, after the appearance of vols. i. and ii., by the death of Gravier. The two volumes contain Nos. 9, 12, and 27 of the works above mentioned.

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29. *A Discourse on Marriage by Proxy* (Dedic. to Lord Chancellor Egerton) is attributed by A. Wood to Gentili.

30. *Mundus alter et idem,* auct. Mercurio Britannico, Franc., 1605 ; Hanov., 1607. Though attributed by the Bodleian Catalogue of 1674 and by Bayle to Bp. Hall, is thought by Blaufus, *Vermischte Beyträge,* ii. p. 328, to be by Albericus Gentilis. The arguments are reconsidered in *The Gentleman's Magazine* for 1896, pp. 66–87, by E. A. Petherick.

UNPUBLISHED WRITINGS.

1. *De Probationibus Libri IV.*
2. *Consultationum Volumen.*
3. *Quaestionum publice Disput. Liber.*
4. *Commentarius ad Edict. de Annona.*
   (Albericus Gentilis complains, in the dedication to *De div. Temp. Appell.*, of the loss of all these—"Quae pessimo "pontificiorum facinore mihi omnia perierunt," possibly in his flight to Carniola.)
5. *Verborum et Historiarum Iuris ex Accursii et Bartoli Commentariis, libri duo.* (Mentioned in *Dial. II.*)
6. *In Aldi Manutii Orthographiam Annotationes.*
7. *De praemio Coronae Muralis disputatio.* (Both mentioned in *Ad Maccab. I.*)
8. *De Poetis Disputatio.*
9. *De potiore interpr. Decalogi in sec. tab.* (Both mentioned in *De Actoribus et Spectatoribus.*)
10. A Volume of *Leggi ed ordini straordinarii da aggiungersi allo statuto composto e riformato dall' egregio ed eccellentissimo messer Alberigo Gentili* was, according to Benigni, presented by Albericus Gentilis to San Ginesio.
11. Among the D'Orville MSS. in the Bodleian Library, I find *De papatu Romano Antichristo assertiones ex verbo Dei et SS. patribus, Alberico Gentili Italo auctore.* The MSS. of the *Condicionum Liber*, of the *De Verborum Significatione*, and of the *Advoc. Hispanica* are in the same collection. The Library of Corpus Christi College possesses the MS. of a correspondence between Dr. Raynolds and Albericus (ccciii, ccclii).

All the works of A. Gentili were placed in the *Index Librorum prohibitorum* in 1603.

No. IX.

THE REVIVED INTEREST IN GENTILI.

THE accident that a copy of this lecture, soon after its publication, in January, 1875, fell into the hands of Signor Mancini, then Professor in the University of Rome, and was by him forwarded to Macerata, produced some unexpected consequences.

An enthusiastic meeting of the University of Macerata, called by Professor Sbabaro on March 1, resolved on the erection of a national monument to Alberico Gentili. A committee was accordingly formed at Rome, comprising most of the leading statesmen and lawyers of the country, under the presidency of Mancini and the honorary presidency of Prince Humbert, now King of Italy, which issued its manifesto on September 14, the anniversary of the Geneva Arbitration. An application was made by the Italian to the British Government for permission to remove the remains of Alberico from St. Helen's to Sta. Croce; and the transference would doubtless have taken place, had it been possible to identify the grave. Streets were rechristened in honour of the newly discovered national hero. A newspaper was named after him at Macerata. Pilgrimages were made to the ruins of the family mansion at San Genesio. All this was the reverse of pleasing to the clerical party, whose dissatisfaction found violent expression in such journals as the *Civiltà Cattolica*, the *Osservatore Romano*, and the *Voce della Verità*; while by way of protest "contro l'empio dissegno di onorare in "Alberico Gentili un nemico della Chiesa," a counter movement was started, with the approbation of the Pope and all the Bishops, for placing in the Vatican a bust of Signor Garcia Moreno.

The statue of the great heretic has not even yet been erected, but a Royal "Istituto tecnico Alberico Gentili" was opened with some pomp at Macerata in 1885, and in 1890 a handsome tablet to the memory of Gentili was unveiled at Perugia in the presence of the King.

A Netherlands Gentili Committee, organized in 1876, also encountered opposition; but of a very different kind. Its President, Professor Asser of Amsterdam, was obliged to defend

its promoters in a series of able articles in the *Algemeen Handelsblaad*, against the charge of want of loyalty to the memory of their great countryman Grotius.

The net result of the controversy seems to have been a fine statue of Grotius, which was unveiled in 1886, with much international oratory, at Delft.

The English Committee, formed in November, 1875, by the Oxford Law Professors and the surviving Oxford members of the College of Advocates, under the presidency of Sir R. Phillimore and the honorary presidency of Prince Leopold, if less ambitious than its Italian prototype, may at least be congratulated on having attained its object without undue delay. It resolved to suitably mark the long-forgotten grave of Alberico, and to republish his greatest work. On June 7, 1877, accordingly, a handsome monument, adorned with the armorial bearings of the Gentili family, of Sanginesio and of the Universities of Perugia and Oxford, was unveiled in St. Helen's Church, in the presence of Prince Leopold, the Italian Ambassador, Sir Robert Phillimore, and many others. It reproduces the epitaph preserved by Konigius (supra App. VII), with the following additional lines:—

EPITAPHIUM HOC
OLIM CONSCRIPTUM, SED NUNQUAM ADHVC IN LVCEM EDITUM, ET EDACI VETUSTATE PENE ABOLITUM, VIRI INSIGNISSIMI HIC VICINIAE TUMULATI IN MEMORIAM QUIDAM EX AMATORIBUS IURISPRUDENTIAE ET LIBERALIUM ARTIUM PONI CURAVERUNT, ANNO SALUTIS MDCCCLXXVII.

Later in the same year, the *De Iure Belli*, edited by the present writer, was published by the Clarendon Press.

The literature of the subject since 1874 comprises the following books or articles:—

1875. Valdarnini, A., Prof. nel R. Liceo di Macerata. *Alberico Gentili fondatore del diritto internazionale.* Carnesecchi e figli, Firenze.

—— Foglietti, Dott. Raffaele. *Cenni sulla vita e le opere di Alberico Gentili, dell'abbate T. Benigni,* ecc. Bianchini, Macerata.

—— Vanni e Santi, *Relazione delle feste fatte in San Ginesio ad A. Gentili.*

1875. Pierantoni, A., Prof. nell'Università di Napoli. Articles in the *Giornale di filosofia e lettere*, ecc., ottobre, dicembre, 1875 (t. II, pp. 221, 387).

1876. Fiorini, Dott. Antonio. *Di A. Gentili e del suo diritto di guerra.* Discorso. Vanni, Livorno.

—— De Giorgi, Alessandro, prof. nella R. Università di Parma. *Della vita e delle opere di A. Gentili.* Commentario in-8°, Parma.

—— Speranza, Avv. Giuseppe. *Alberico Gentili, Studi.* Pallotta, Roma.

—— Comba, Prof. Emilio, in the *Rivista Cristiana*, Firenze, 1876, pp. 10, 425; 1877, pp. 3, 41, 81.

1877. Fiorini. *Del diritto di guerra di Alberico Gentili.* Traduzione e discorso. Vigo, Livorno.

—— Alberici Gentilis *De Iure Belli, libri tres*, edidit T. E. Holland. Oxonii, e typographeo Clarendoniano.

1878. Sir Travers Twiss, *Albericus Gentilis on the Right of War*, in the *Law Magazine and Review*, February (p. 137).

—— Saffi, Conte Aurelio, *Di Alberico Gentili e del diritto delle genti.* Letture. Zanichelli, Bologna.

1879. Holland, T. E., the article *Gentilis, Albericus*, in the *Encyclopædia Britannica.*

1884. Holland, T. E., *Alberico Gentili, Discorso inaugurale.* Tradotto da Aurelio Saffi. Loescher, Roma.

1885. Marson, L., *A. Gentili*, discorso tenuto il dì 7 *Giugno*, 1885, *per l' inaugurazione d' una lapide nel R. Istituto Tecnico A. Gentili in Macerata.*

1889. Holland, T. E., the articles *Gentili, Alberico*, and *Gentili, Robert*, in the Dictionary of National Biography, Vol. XXI.

1896. Thamm, M., *Albericus Gentilis und seine Bedeutung für das Völkerrecht.* Inaugural-Dissertation, Strassburg.

Cf. *Revue de Droit International*, 1875, p. 321; 1876, pp. 141, 690; 1877, p. 293; 1878, p. 682; 1883, p. 160; 1886, p. 502.

II

THE EARLY LITERATURE OF THE LAW OF WAR[1]

It cannot be too clearly understood that International Law, as a system of rules attempting to govern the totality of the relations of States, is a conception of modern date, towards which even Grotius was only feeling his way. The science has come down to us by no unbroken course from one remote fountain-head, but is the result of the recent convergence of many independent rivulets of thought.

Of these, perhaps the most important, as well as the first to spring into existence, was that which occupied itself with the law of war. Just as forms of litigious procedure are a more prominent topic in early legal literature than the substantive law itself, so were the rules which are applicable to the conflicts of States discussed before those which should govern their peaceful intercourse.

I ventured some years ago to claim for an Oxford Professor the merit of having originated International Law, as it is now understood, and especially the law of war[2].

The treatise of Gentili, *de Iure Belli*, has since been still

[1] A Lecture delivered in 1879.

[2] v. supra, pp. 1, 21.

more closely connected with the University by the discovery of a parcel of his letters. From one of these, kindly presented to me by the owner, it appears that in 1588 Gentili chose this subject of the law of war for the address which it was customary for the Regius Professor of Civil Law to deliver at the annual "Act[1]." There can be no doubt that the address formed the substance of that first sketch of his great work which Gentili published in the autumn of the same year. It must of course be admitted that the idea of a law of nations in general, and of a law of war in particular, had been growing gradually, as all ideas grow; but Gentili marked an epoch in the history of those ideas, and launched the study on a new course of progress.

I propose to-day to examine the growth of the idea of a law of war before his time; and to trace it, so far as I have been able, to its various sources, a task which has hardly as yet been attempted[2].

Two stages of this growth may be distinguished, which may be called the prae-literary and the literary respectively. The former was a time of preparation and of the accumulation of materials. During the latter, special treatises were written upon the law of war.

I. The prae-literary period is that of the Fathers, of the Doctors of the Church, of the Decretum and Decretals, and of the glossators and commentators upon those earlier portions of the canon law.

Most of the discussions of this period were of an exclusively theological character, but we may also detect in them some slight survivals of classical influence.

[1] v. supra, pp. 12, 29.

[2] But see now the following valuable works by Professor Nys, of Brussels. *Le Droit de la guerre et les précurseurs de Grotius*, 1882; *L'arbre des batailles d'Honoré Bonet*, 1883; *Notes pour servir à l'histoire littéraire et dogmatique du Droit International en Angleterre*, 1888; *Les origines du Droit International*, 1894.

It was not surprising that a controversy should arise in the Christian Church upon the lawfulness of war. Texts may be quoted from the New Testament which seem to prohibit any opposition of force to force, and the categorical commandment 'thou shalt not kill' needed exegesis if it was to be read subject to a number of implied exceptions. There were accordingly not wanting Christian writers who adhered to the literal meaning of these texts. Thus Tertullian thinks it unlawful for a Christian to be a soldier[1], and St. Cyprian says: "Homicidium, quum admit-"tunt singuli, crimen est. virtus vocatur quum publice "geritur. impunitatem sceleribus acquirit non innocentiae "ratio sed saevitiae magnitudo[2];' and again "coepit esse "licitum quod publicum est[3]." On the other hand, St. Augustine was the champion of such a reasonable construction of the Bible as would allow the lawfulness of war[4], and his views seem to have been generally accepted.

The non-theological, or classical, discussions on the subject are preserved in the *Etymologiae* of Isidorus, who became Bishop of Seville in 600. One of his chapters, entitled "de bellis[5]," which distinguishes between the terms "bellum," "pugna," "tumultus," and between "civilia" and "plusquam civilia bella," "just" and "unjust" wars, is mainly founded on Cicero. Another, entitled "quid sit "ius militare," strikes the key-note of much that was subsequently written upon the subject, by propounding the following definition: "Ius militare est belli inferendi "solennitas; foederis faciendi nexus; signo dato con-"gressio in hostem vel commissio, item signo dato receptio; "item flagitii militaris disciplina, si locus deseratur; item "stipendiorum modus; dignitatum gradus; praemiorum

[1] *Adv. Iudaeos de Idol.* c. 19; *de Cor. milit.* c. 11.
[2] 2 *Ep.* 2. [3] Ib.; cf. Sen. *Ep.* 87, 95.
[4] *Contra Faustum*, xxii. c. 75; *Quaestiones in Iosue*, viii. 3.
[5] Lib. xviii. c. 1.

"honor, veluti cum corona vel torques donatur. Item "praedae decisio et pro personarum qualitatibus ac labor-"ibus justa divisio ac principis portio."

But the time was coming for a more technical treatment of a topic which had hitherto been only considered incidentally. Bologna, the alma mater of all the law schools of Europe, in the twelfth century not only revived the teaching of the corpus iuris of Justinian, but was also busy with the codification of the canon law. The 23rd causa of the Second Part of the Decretum Gratiani contains a discussion *de re militari et de bello*, in which are embedded the theological conclusions of St. Augustine and the classical reminiscences of Isidore, together with sundry papal decisions. The preface informs us that certain Catholic bishops, having, by order of the Pope, collected an army and waged war, using stratagems as well as violence, against certain heretical bishops and their flocks, for the purpose of bringing them to the true faith, slaying some, imprisoning others, and treating their property as forfeited, it had been thought right to satisfy scruples on the following points :—

1. Whether it is a sin to be a soldier.
2. What war is just, and how just wars were waged by the children of Israel.
3. Whether injury to allies is to be prevented by force of arms.
4. Whether vengeance is to be exacted.
5. Whether it be a sin for a judge or officer to slay the guilty.
6. Whether the wicked may be forced to what is good.
7. Whether heretics should be stripped of their goods and the goods of their church, and whether he who is in possession of goods taken from heretics, can be said to be in possession of other people's goods.

8. Whether Bishops or other clergy may, by their own authority, or that of the Pope or Emperor, take up arms.

In answer to these questions, the Decretum establishes that warfare is not necessarily sinful; in other words, that a soldier is not a homicide. It mentions the characteristics of a just war; decides in favour of the lawfulness of stratagems; and lays down rules as to the duties of the clergy with reference to the use of force.

This 23rd causa, together with the title *De Homicidio* in the sixth book of the Decretals, became the nucleus round which the Glossators, especially Pope Innocent IV, Hostiensis, Ioh. Andreae, Guido the Archdeacon of Bologna, and Dominicus de S^to^ Geminiano, spun a web of fine distinctions, which at last amounted to a considerable body of doctrine. St. Thomas Aquinas systematized the current views of the thirteenth century, adding something of his own, in the 40th quaestio of his 2, 2^dae^. In the century following, Bartolus wrote, and presented to the University of Perugia, a tract upon "Reprisals," a topic which, with that of private war, was of peculiar interest to the semi-independent nobles and cities, whose feuds are the history of mediaeval Italy. His pupil Baldus contributed to the subject a commentary on the title of the code *De Servitutibus et aqua*. The materials were now at hand which during the period following were to be worked up into a special literature attempting to deal with the law of war as a whole.

II. The first substantive treatise upon the subject was written at Bologna, during a siege of the city, by Giovanni da Legnano, Professor of Civil and Canon Law in the University, and Vicar of the Pope. His reputation was attested by a public funeral: the simplicity of his dress and the oddity of his humour, by the following anecdote.

Appearing at a wedding breakfast in very shabby clothes, he was given the lowest place, whereupon he sent out for a magnificent purple coat, which he carried to the top of the table, calling out to the astonished guests, as he left the room, "you have worshipped fine raiment; here you "have it."

His book, *De bello de represaliis et de duello*, though written in 1360, as appears from the proem, was first printed in 1477 at Bologna[1]. If I trouble you with a slight sketch of its contents it is because they are highly characteristic of the age, and imply a conception of the subject which was substantially that of all the writers of the period now under consideration. It would however be impossible, without insupportable tedium, to gain an adequate idea of the almost mechanical precision with which the author, after the fashion of the schoolmen, divides and subdivides his topics, stating his arguments pro and contra, and finally the "solutio," under each head of the discussion. He relies almost entirely upon the Bible and the civil and canon laws, but in his definition of virtue avowedly follows Aristotle. He makes little use of historical illustration, though mentioning the case of Conradin.

The work is divided into three parts, the last of which consists of three tractates, and the third tractate of five tracts. He defines "bellum" as "a contention arisen on "account of some proposal at variance with human desire, "tending to get rid of the variance," meaning that the object of all strife is the re-establishment of peace. So wide a definition would, however, obviously embrace many topics which have nothing to do with war in the ordinary sense of the term. He accordingly subdivides "bellum" into its various kinds. It is, he says, "spiritual," in which case it may be "celestial" or "human," or it is

[1] *Ad instantiam Sigismundi de Libris per me magistrum Hen. de Colonia.* The reprint in the *Tractatus Tractatuum*, t. xvi. f. 371 (1515), is somewhat abridged.

"corporeal," which again is subdivisible into "universal" and "particular."

By "particular corporeal war," he means private war or violence, and this may either be personal self-defence or *represaliae.*

His "bellum corporale universale" is war in the ordinary sense of the term, i. e. a struggle between states.

In discussing private war and self-defence, he considers such questions as, whether a priest who is attacked while celebrating mass, or baptizing a child which is on the point of death, is bound, at the risk of his life, to continue the performance of the sacred rite, or may turn round upon his enemy; whether a vassal should run to the rescue rather of his lord or of his father; whether reprisals may be exercised against students on their journeys between the Universities of Bologna and Padua. But we must pass by what is said with reference to this subordinate topic of private war, which has a curious history of its own, and confine our attention to the doctrine of Legnano with reference to "war" properly so called.

He establishes the lawfulness of war from Augustine and the Digest. He inquires who may declare war. May the Pope and the Emperor declare war upon one another? Under the head of the "aggregantes bellum," i. e. its efficients, he deals with the legion, with the duties of soldiers and of the general, and hence is led into an ethical disquisition on the virtue of courage. He next takes up questions of feudal duty: when are vassals bound to follow their lord? may clergymen fight? do stipendiaries forfeit their salary when on furlough? The chapter entitled *De spoliis et captivis* is perhaps the best in the book. It deals with the questions of booty and postliminy; with the position of prisoners of war, who, according to Christian custom, do not become slaves; with the lawfulness of stratagems; with the rights of the non-combatant population; with the lawfulness of fighting on saints'

days, and the possibility of the salvation of those who die in battle. The chapter ends with the seven species of war; a list which constantly reappears in this literature; namely, (1) "Romanum," or war against infidels; (2) "judicial," against rebels; (3) "presumptuous," by rebels; (4) "licit"; (5) "rash"; (6) "voluntary"; and (7) "necessary."

Legnano seems to have had but few followers in the fourteenth and early fifteenth centuries[1].

In the collection of tracts by Henry of Gorcum, Professor of Divinity and Vice-Chancellor of the University of Cologne about the middle of the fifteenth century, there is one entitled *De bello iusto*, in which the author sums up his views in twelve very indistinctly stated propositions. He founds principally upon Scripture and upon the "blessed Doctor." He disapproves of certain modes of conducting warfare, rejecting the plea of custom, which had been urged in their favour, because, he says, "lata "et spaciosa est via vitiosorum, et multi sunt qui intrant "per eam."

Paride de Puteo of Naples, besides writing with acceptance upon historical subjects, and especially upon Livy, composed a long treatise *De re militari*, which however deals rather with single combat and private war than with the conflicts of nations.

Among the numerous writings of Martinus Gariatus of Lodi, a professor of law at Siena and Pavia, several of which touch more or less upon kindred topics, is one specifically entitled *De bello*, consisting of fifty-three very disconnected "quaestiones." He asks, for instance,

[1] Among these, however, Honoré Bonet must not be forgotten. His *Arbre des Batailles*, written about 1385, and admirably re-edited in 1883 by M. Nys, led to the composition early in the following century of the *Livre des faits d'armes et de chevalerie* of Christine de Pisan. On these works, and their translators and imitators, see M. Nys, *Droit de la guerre, &c.*, 1882, p. 159, and *Origines*, 1896, p. 108.

whether, if the Duke of Burgundy has taken some French towns, the French King may "ex intervallo" retake them, and replies that this may be done if no redress can be obtained from either Pope or Emperor.

The series of Italian writers on war comes to an end in the middle of the sixteenth century with Costanzo Landi and Pierino Belli.

The former published, as quite a young man, in 1549, a book of *Enarrationes ad tit. Pandect. de Iustitia et Iure*[1], the 23rd chapter of which is entitled "A question pro-"pounded, treated by no one hitherto but solved by us—"what is a just war, and whether by divine law wars are "lawful, and what was the manner of declaring war among "the Romans, and who may make war; and at the end "some exhortations to peace, and praises of the Caesar "Charles V." There is nothing new in the treatment of the question, which is answered in the usual manner from Isidore and Cicero. Landi ends by exhorting Charles to fight the infidels.

The work of Pierino Belli, *De re militari et de bello*, which appeared in 1563, is a much more important affair, and has recently attracted considerable attention.

The author was born at Alba in 1502, and after studying law at Perugia became, at the early age of thirty-three, "auditore di guerra," and afterwards "consigliere di "guerra," in the armies of the Emperor Charles V and Philip II. In his later years he was one of the most respected members of the Council of State of Emanuel Filibert of Savoy, and in 1564 succeeded, against the opinion of his colleagues, in dissuading the Duke from accepting a recognition by the Turks of his title to the crown of Cyprus, as a bribe for assisting them against Venice. He was also employed in 1562 in negotiations with the French at Lyons, as to the execution of the Treaty of

[1] q. v. apud Otto, *Thesaurus*, iii.

Château-Cambrésis; and afterwards, on behalf of the Duke of Savoy, to whom the dispute had been referred as arbitrator, settled finally a long-standing quarrel between Florence and the Duke of Ferrara. He died in 1575, and was buried by the care of his son Domenico, who became Grand-Chancellor of Duke Carlo Emanuele I, in the Cathedral at Asti, where his tomb is still to be seen. It was about 1558 that he wrote his book *De re militari et de bello*, and, in dedicating it to Philip II, explains its object. He is far from being so presumptuous as to suppose that he can teach this great King and general anything as to tactics, or military equipment, or castrametation or ordonnance. His purpose is merely to remind princes of what is permissible and honourable in the declaration of war and the conclusion of peace; what should be the treatment of combatant enemies, of prisoners, of the non-combatant population, of property of all kinds, animate or inanimate. Belli's conception of his subject was an admirable one, but he was not so successful in working it out in detail. He seems to be led aside in order to touch upon all the questions which had come before him as military judge, and indeed apologizes for defects due to an active life spent for the most part at a distance from books[1].

The work is divided into eleven parts, of which the first treats of the origin of war, which is said to be as old as the days of Cain and Abel—nay older, for there was "war in heaven"; and of its species; but then we have a digression upon the various ranks of soldiers, the precedence of officers, and the military oath.

The second part deals with just causes of war, and the manner of conducting it. The enslavement of the American Indians by the Spaniards, and the execution of Conradin are incidentally approved of; the latter on

[1] Pars. i. tit. xi. § 15.

the ground that "homo mortuus non ciet bellum." Parts three to six treat of prisoners, truces, and allies. Parts seven and eight are a digression upon the privileges of soldiers and upon military offences. The ninth, tenth and eleventh parts are devoted to safe-conducts, to peace (which he discusses because "natura ita comparatum est "ut contraria contrariis cohaereant"), and to hostages.

An attempt has recently been made in a very able essay by Signor Mulas of Turin to represent this work as marking a new departure in the literature of International law. In this view, which not unnaturally commends itself to Piedmontese patriotism, supported though it is by some phrases employed by Signor Mancini when Professor at Turin, I am, after a re-examination of the treatise, unable to concur. Belli lived just too early to think of placing his science upon another foundation than that of the Church, nor had he such a grasp of his subject as would have enabled him to abstract it from topics with which it has no further connexion than that they, like it, are brought under the notice of a President of Courts-martial.

The literature which may be said to have culminated in Italy in the treatise of Belli had previously taken fresh root in Spain, where it flourished exceedingly during the whole of the sixteenth century. Its transplantation is not to be wondered at, if we remember the constant communication between the two countries; especially the frequent visits of Spanish ecclesiastics to Rome, and the regular resort of Spanish students to the University of Bologna, where a college, which still exists, had been founded for their reception under the will of the celebrated Cardinal Albernoz.

The exuberant growth of the transplanted literature is explained by the practical interest which was given to it by the controversy which arose as to the rights of the American Indians against their Spanish conquerors. The

older topics were however by no means neglected, and indeed form the staple of the Dialogue between master and student, *De bello et bellatoribus*, composed by Johannes Lupus, a canon of Segovia, who died at Rome in 1496; as also of the laxly written chapter (XLI) *De bello iusto et iniusto*, which occurs in the *Speculum iuris pontificii caesareique* of Alphonso Alvarez, I.U.D., Bishop and President of the Royal Chamber at Naples. The same may be said of the tract of Franciscus Arias *De bello et eius iustitia*, published in 1533. The author, who had been fellow of the Spanish College at Bologna and became a judge at Naples, tells us that he had disputed in an assembly of cardinals, held at Rome in 1532, on the question whether a war of the Emperor against the Pope, or vice versa, could ever be justifiable. He now writes in order to discuss the question more thoroughly; but he touches also upon a variety of other well-worn topics, many of them relating to private war, single combat, and suicide, from a priestly rather than a legal point of view, in 220 disorderly sections.

Franciscus Victoria (1480–1546), a Dominican monk and professor at Salamanca, wrote thirteen theological *Relectiones*, the fifth of which discusses the vexed question of the rights of the Indians. "The inquiry," he says, "is "not for jurists only, because, since the savages are not "subject to human law, their affairs are not to be tested "by human, but rather by divine law, in which the jurists "are not sufficiently expert." Were the Indians, he asks, truly owners of their soil before they were visited by the Spaniards? Those who are living in mortal sin have, according to Wiclif, no property. He concludes in favour of the title of the Indians. By what right then could the Spaniards dispossess them? By seven pretended, seven good, titles. It is unjust to attack them for the purpose of making them Christians, but if they prevent the preaching of the gospel they may be coerced.

In the sixth "Relectio" Victoria is led to consider the wider question of the "ius belli" generally. He asks whether Christians can wage war at all. Luther, "qui "nihil incontaminatum reliquit," denied the right of resisting even an invasion of the Turks. Herein he followed Tertullian; but Victoria, on the authority of Augustine, holds to the contrary opinion. He proceeds to ask, secondly, with whom is the authority of declaring war? thirdly, what are the causes which justify a war? and lastly, in what manner may a just war be lawfully conducted? The whole discussion, which, though short, is very clear and complete, has a distinctly theological character.

Dominicus Soto, a pupil of Victoria, and like him a Dominican monk and professor at Salamanca, was born 1494, and died 1560. He was sent to the Council of Trent by the Emperor Charles V, and subsequently became his confessor. In the fifth book of his great work *De iustitia et iure*, he inquires as to the lawfulness of booty; and from the answer given by St. Thomas to this question—"si iustum est bellum praedam esse "licitam"—is led to the requisites of a just war. After treating this topic in the usual manner, he goes on to say that a wide question as to the right of fighting against infidels has been opened up by the discovery made in that century by his countrymen of the western world. He has reasons of his own for not entering at present upon the subject, but promises a work, which seems never to have been written, *De ratione promulgandi Evangelium*, in which he will deal with the three orders of infidels, and the rightfulness of seizing their property.

This question was to Soto of more than academical interest. He had been personally mixed up with the proceedings which took place when it presented itself for decision in a practical shape. The story of the contest between the Bishop of Chiapa, Las Casas, as the

protector of the Indians, and the jurist Sepulveda, as the assertor of the right of the Spaniards to enslave them, is too long to be told here, except in its relations to the literature of the law of war.

Sepulveda, after graduating at a Spanish University, was elected in 1515 to a fellowship in the Spanish College at Bologna, of which he afterwards wrote the history, but from the books of which his name was removed in 1521 for non-residence in contravention of the statutes. In 1534 he published at Rome a dialogue *de convenientia militaris disciplinae cum Christiana religione*, entitled *Democrates*; and, encouraged by its success, wrote in 1548, *Democrates secundus, de iustis belli causis adversus Indos*, in which he endeavoured to remove the scruples which began to be widely entertained in the mother country against the reduction of the American Indians to slavery.

The publication of the latter work was prohibited by the advice of the Universities of Alcalá and Salamanca, on the ground that it might encourage the Spanish troops in severity toward the barbarians, and is chiefly known from the *Apologia pro libro de iustis belli causis*, which Sepulveda published at Rome in 1550.

In the same year the Emperor convoked a junta of theologians and others, together with the council of the Indies, at Valladolid, to hear the question argued "whether a war of conquest can be lawfully undertaken "against the nations of the New World, if they have "not committed any new faults, other than those com- "mitted in the time of their infidelity." Sepulveda supported the affirmative answer to this question, and defended the contents of his book, while Las Casas, who was described by his adversary as "the architect "of all this pother," maintained the negative, reading during five whole days from his *Historia apologetica*. A *précis* of the arguments on both sides was drawn up by Soto, and published. Although the decision of the

junta was in favour of the legal, as against the theological argument, i.e. of Sepulveda as against Las Casas, the government thought it better to prohibit the export of Sepulveda's book to the New World.

Vasquez (1509–1566), in chapters 9 and 10 of the First Book of his *Controversiarum illustrium libri tres*, offers some incidental remarks upon such topics as the lawfulness of booty, of slavery, and of making war upon the Indians.

His contemporary Covarruvias (1512–1577), Bishop of Segovia, is the last of the casuists with whom we are at present concerned. In his "Relectio" on the rule beginning with the word "peccatum," in the title "de "regulis iuris" of the fifth book of the Sext, he discusses "the restitution of booty taken in war." In order to do this, he is obliged to inquire whether war may be just, and what are the requisites of a just war. He is thus launched upon the old inquiry, which he conducts with some system, and upon which he engrafts two questions which were then of especial interest to his countrymen, namely—whether the King of Spain was not wholly independent of the Emperor, and on what grounds war might lawfully be made against infidels.

One other name remains for notice; and it is curious that, like Pierino Belli, who closes the series of the Italian lawyers who wrote upon war, Balthazar Ayala, who follows the list of Spanish casuists treating of the same subject, was a military judge in the service of Philip II. He was born at Antwerp in 1548, and died in 1584. He was judge in the armies of the Prince of Parma, Alessandro Farnese, to whom, dating from the camp at Tournay in October, 1581, he dedicates the work which was published at Douay in the following year, under the title *Balthazaris Ayalae, i.c. et exercitus regii apud Belgas supremi juridici, de iure et officiis bellicis et disciplina militari libri III.*

The nature and object of the work have been much misunderstood, as indeed might be inferred from the title. It does not profess to deal exclusively with the law of war as between nations, but is equally concerned with questions of military discipline.

The first book is entitled "de iure bellico," and treats of declarations, just causes of war, single combat, reprisals, booty and postliminy, good faith between armies, truces, stratagems; in short the topics customarily discussed in treatises on the subject. The first chapter of Book II is of the same character, enforcing the duty of moderation towards the conquered; but the remainder of this book relates chiefly to tactics; and the whole of Book III is avowedly devoted to military discipline.

I have now traced the history of the literature of the law of war down to the latter part of the sixteenth century, when it was about to enter upon a new phase, and have next to inquire into the general character of this literature, and to contrast it with that which was to follow. Up to this point the subject had been in the hands of Italians and Spaniards, who had always treated it with distinct reference to the doctrines of the Catholic Church. All the writers whom we have passed in review may be said to have had a common conception of their topic, and to have employed in its discussion a common stock of inherited formulae.

The general conception of it is, I think, due to Isidore, Bishop of Seville, who, as has been already stated, answers the question "quid sit ius militare?" by including in it not only such matters as the solemnities of declaring war, and the formalities of making treaties, but also the punishments for desertion and other military offences, the rate of pay, the distinctions of military rank, the rewards for distinguished service, and the rules for the distribution of booty. He thus combines in one topic matters which

seem to us so widely different as the rudiments of an international law of war, the principles of army organization, and the disciplinary rules which are administered by courts-martial.

These adventitious topics are naturally excluded from the title of the canon law, "de re militari et de bello," which next in chronological order helped to fix the conception of the subject, but reappear throughout almost the whole of the subsequent literature; which is further diluted by disquisitions upon private war, single combat, suicide, and the obligations of a feudal vassal to his lord. I have been at some pains to trace to their origin what may be called the stock distinctions which perpetually recur in the writers under consideration.

The seven sorts of war may be found in the comment of Henricus de Segusio ("Hostiensis"), who died in 1271, on the 23rd causa of the second part of the Decretum Gratiani[1]. His contemporary St. Thomas is sometimes vouched as the inventor of the enumeration[2], but, so far as I have been able to discover, erroneously.

The five kinds of unjust war appear first in the gloss by Pope Innocent IV (1243-1254) on the same causa of the Decretum.

The two kinds of just war, "general" and "particular," date from St. Thomas, 22^{dae}, q. 123. In q. 40 he embodies from St. Augustine the three requisites of a just war, viz. "principis auctoritas," "iusta causa," and "intentio recta."

The three species of war, "invasionis, defensionis, "recuperationis," are due to the comment of Baldus on the title of the Code *De servitutibus et aqua* (iii. 34), and also on viii. 4. l. "recte."

[1] It is followed by Ioh. Andreae, Domenicus de St. Geminiano, and Guido de Bausio ("Archidiaconus" of Bologna) on the Sext (1 de Homi. lib. 6).

[2] See Lupus, *Tr. Tr.* xvi. p. 320. "B. Thomas in cap. 1 de Homi. "lib. 6, ponit septem bella."

The definition of "iustum bellum," "quod geritur "expraedicto, aut rebus repetitis aut propulsandorum "hostium causa," is from Cicero through Isidore.

These are small points; but when phrases and distinctions occur as a matter of course in every writer upon a given topic during a couple of centuries, it is interesting to learn whence they were originally derived. The fact of their constant employment is noteworthy, as showing how little fresh thought was bestowed by the writers on the law of war upon the treatment of their subject.

One or two other characteristics of these writers may be mentioned. They are, to a man, Catholics, and for the most part ecclesiastics as well as lawyers; drawing their arguments from the Bible, as interpreted by St. Augustine, and from the civil and the canon law. Some few of them are military judges, and these, with some of the others, treat not only of the law of war as between nations, but also of the internal discipline of armies. They make less reference than might be expected to one another's writings, a fact which may perhaps be explained by the length of time during which some of those writings remained in manuscript. When one of these writers does refer to his predecessors, he does so in terms which are not particularly complimentary.

There was much uncertainty as to the class of persons who were qualified to treat of the subject. It was usually in the hands of lawyers, but their capacity for dealing adequately with it was contested not only by the theologians, but also by the rising school of political writers, such as Bodin and Pierre Fabre.

At the date to which we have carried it, this literature had been fully worked out upon its original lines. It needed to be entirely reconstructed if it was to influence modern life and politics. The international law of war had to be isolated from the incongruous topics by which it was obscured, and to be supported by principles which

would be respected by the Protestant as well as by the Catholic states of Europe. This was the task which was performed by Alberico Gentili; and he was fitted for it by the strange fortune which first trained him in all the traditional legal lore of Italy, and then exiled him to England: a Protestant, not a Catholic; a layman, not a priest; a professor, not a judge of courts-martial. His achievement was threefold. He got rid of questions of tactics and of the discipline of armies; he reduced to reasonable dimensions the topic of private warfare; and he placed his subject upon a non-theological basis. It may perhaps also be said that he avoided the error, subsequently committed by Grotius, of endeavouring to force most of the topics of International Law into the framework of a treatise professedly on the Law of War.

The literature of which I have attempted a very slight sketch took its rise in the thirteenth century, at Bologna. The literature which superseded it dates from the sixteenth century, more specifically from the year 1588, and first saw the light in the University of Oxford.

III

THE BRUSSELS CONFERENCE OF 1874, AND OTHER DIPLOMATIC ATTEMPTS TO MITIGATE THE RIGOUR OF WARFARE[1]

AMONG the points in which International Law is said not to be law at all, one of the most important is the absence of a Legislature. The usages of which International Law consists have, for the most part, grown up imperceptibly, spreading with the general spread of civilization, or imposed by the preponderant power of nations to the interests of which they were for the time subservient.

There has been, however, of late years, a tendency towards a development of International Law by other methods. The idea that all states which conform to European manners are, in a sense, component parts of a *civitas maxima*, has gained new currency from the modern facility of travelling and the ever-spreading ramifications of commerce. It seems a natural consequence that such states should, from time to time, send delegates to a sort

[1] A Lecture delivered in 1876. J. Parker, Oxford and London, 1876 (with appendices of documents).

of representative assembly, to discuss, and possibly to modify, the previously-received views of the Law of Nations.

The quasi-legislation which has thus been recently attempted, is something very different from the work of the old Congresses, which met at the conclusion of a war to settle the terms of peace, and incidentally to remodel the map of Europe. By taking a province from one kingdom and giving it to another—by the admission of insurgent states as effective members of the family of nations—by the recognition of a new dynasty as legitimately in possession of power—these Congresses produced indeed results of the greatest political importance, but they neither added to, nor subtracted from, the body of rules which compose International Law.

The same remark will apply to the acts of even such a body as the Holy Alliance, directed as they were, not merely to the pacification of existing wars, or the restraint of dangerous ambition, but also, and essentially, to the maintenance of certain high political ideals.

Another epoch may perhaps have begun when the Congress of Vienna indicated the principles which should guide the regulation of navigable rivers flowing through the territories of several powers, and defined the previously unsettled scale of diplomatic precedence. Forty years later came the quasi-legislative act known as the "Declaration of Paris," closing the long controversy as to the liability to capture of neutral property found at sea in combination with enemies' property, and rendering privateering illegal; at least, as between the parties to the Declaration. For, be it observed, the quasi-legislation by a congress is, strictly speaking, a contract, which binds only those who are parties to it; though, if those parties are numerous and important enough, the moral weight of their formulated opinion is with difficulty resisted in the long run by a dissentient minority of the nations.

The subsequent instances of quasi-legislation by the European powers deal exclusively with the conduct of warfare. Modes of exercising hostilities, which seemed natural even in the time of the first Napoleon, and which still remained sanctioned in the pages of established text writers, had become unendurable to the susceptibilities of a continent humanized by a forty years' peace.

The late Conference of Brussels was an attempt to extend and systematize the modifications which preceding conferences had succeeded in introducing into the rigour of warfare. The objects, therefore, of the later cannot well be understood without some acquaintance with the history of the earlier conferences, and a connected, though slight, sketch of the whole subject may not be unacceptable to those who wish to form an independent opinion as to the policy which should be pursued by this country, in the probable event of a renewal of the Russian proposals for a diplomatic definition of the rules of war.

The topics to which the attention of persons anxious for the mitigation of the severity of those rules has successively been called, are: the care of wounded, permissible weapons, the condition of prisoners, and, lastly, the usages of warfare as a whole.

I. The sufferings of the wounded after a battle became a subject of the most painful interest during the Austro-Italian war, and were the occasion of works which appeared nearly at the same time, in Italy, France, and Switzerland. In 1861, Dr. Palasciano read at Naples two addresses on the neutralization of wounded soldiers[1]; and in the same year, M. Henri Arrault published a pamphlet on the same subject at Paris[2]. In 1862, M. Dunant published at Geneva, *Un Souvenir de Solférino*, giving an account of the battle, of which he was an eye-witness, and of the

[1] *La neutralità dei feriti in tempo di guerra.*

[2] *Notice sur le perfectionnement du matériel des ambulances volantes.*

condition of the wounded after it. The book is by no means pleasant reading. It was written with a purpose, and describes the horrors of war in the plainest language. The misery caused by lack of water on the battle-field itself was perhaps inevitable; but the state of the hospitals, as described by M. Dunant, for weeks afterwards was unpardonably shocking.

The wounded were taken to Castiglione, and there were laid in rows, under awnings, in the churchyards, when all the public buildings, including the churches, were already overfull of them. The surgeons, after attending only to the most promising cases, were obliged to rejoin the army. There were not nearly hands enough to change the bandages which had been hastily applied upon the field of battle. A staff of volunteer nurses was organized by M. Dunant; but many of them proved quite unable to face the fearful scenes at which their services were required. After many pages of most terrible detail, with which I should be sorry to harrow your feelings, Dunant puts the question, "Why tell such a story as "this?" And he answers it by asking another question: "Would it not be possible, during a period of peace and "tranquillity, to form associations, the object of which would "be to bring help to the wounded in time of war, by means "of volunteers, who should be enthusiastic, devoted, and "well qualified for such a work?" And he goes on to suggest that the subject should be considered by a congress of philanthropists of all nations.

This appeal was not without fruit. The *Société Génevoise d'utilité publique* in 1863 called together a conference of persons interested in the subject, and in the following year induced the Federal Council of Switzerland to invite the various Governments to send Delegates to a diplomatic Conference. The Delegates met at Geneva in August, 1864, under the presidency of the Swiss General Dufour, and a Convention was signed, to which, either at the time

or subsequently, most of the European powers have become parties[1].

The idea of respecting hospitals was not of course an entirely new one. A black flag generally denoted the spot where the wounded were gathered together after a battle, and by tacit agreement no shots were fired in that direction. Something also more definite than obedience to an obvious instinct of humanity had occasionally been stipulated for by treaty. Thus a convention was concluded at Aschaffenburg, in 1743, between the Austro-Hanoverian and the French armies, by which each undertook to respect the hospitals of the other. And a convention made, a few years afterwards, between the Marquis de Barrail and General Conway, provides that neither surgeons nor wounded are to be made prisoners. Such instances of humane feeling were, however, rare; and when they did occur, fell very far short of the principles sanctioned by the Geneva Convention[2]. Those principles are, in effect,

[1] The Convention recites that the parties to it "également animés "du désir d'adoucir, autant qu'il dépend d'eux, les maux inséparables "de la guerre, de supprimer les rigueurs inutiles, et d'améliorer le sort "des militaires blessés sur les champs de bataille, ont résolu de "conclure une convention à cet effet." It has been signed by the following Powers: in 1864, Baden, Belgium, Denmark, Spain, France, Italy, Netherlands, Sweden and Norway, Switzerland; 1865, Greece, Great Britain, Mecklenburg-Schwerin, Prussia, Turkey; 1866, Austria, Bavaria, Hesse, Portugal, Würtemberg; 1867, Russia; 1868, The Holy See; 1874, Persia, Roumania, San Salvador; 1875, Montenegro; 1876, Servia; 1879, Argentine Republic, Bolivia, Chili; 1880, Peru; 1882, United States; 1884, Bulgaria; 1886, Japan; 1895, Siam; 1896, South African Republic; 1897, Orange River Free State.

[2] The more important conventions of this kind are mentioned by M. Gustave Moynier, the President of the *Société Génevoise d'utilité publique*, and of the *Comité international de secours pour les militaires blessés*, in his *Étude sur la Convention de Genève* (Paris, 1870), pp. 38–48. Gurlt, *Zur Geschichte der internationalen und freiwilligen Krankenpflege im Kriege*, 1873, has established that during the wars of the two centuries and a half preceding 1864, something like three hundred conventions were made with a view to the protection of the wounded.

that surgeons and others attached to military hospitals are exempt from being made prisoners; hospitals and ambulances are neutralized; wounded are to be cared for irrespectively of nationality, and inducements are held out to the inhabitants of the scene of the war to receive them into their houses; a flag and brassard, both bearing a red cross on a white ground, are to protect buildings and persons connected with the service of the wounded[1].

The Convention has been severely criticized from a military point of view[2]; but its friends are enthusiastic, and before long attempted to add to its stipulations a long list of new ones.

A Conference held at Paris at the time of the exhibition of 1867, succeeded in persuading the Swiss Government once more to invite the European powers to discuss the subject at Geneva. Delegates accordingly met there in 1868, but several States not being represented, no Convention was concluded. A *Projet d'articles additionnels* was, however, drawn up, which would become a treaty only after receiving the assent of all the parties to the original convention. Its first five articles are explanations and extensions of the Geneva Convention. Articles 6–15 are an attempt to apply the same principles to naval warfare, by neutralizing hospital ships, and persons engaged in the relief of the wounded or drowning.

Hitherto this *Projet* has not been formally ratified. It was, however, accepted as a *modus vivendi* by both belligerents during the Franco-German war, and after a desultory negotiation, by which several interpretative clauses have been added to the articles as originally settled, it has

[1] For the text of the Convention see Parl. Papers, 1865 [3479], lvii. 471. For the Protocols see the *Nouveau Recueil Général*, par Martens, Samwer et Hopf, t. xx. pp. 375-399.

[2] E.g. an article in the *Allgemeine Zeitung*, Nov. 4, 1868, and others cited by Moynier, u. s. p. 63. Cf. Sir H. Maines' *Lectures*, p. 158.

received the approval of Great Britain, and of most of the other Powers[1].

II. Next to the treatment of wounded, attention was called to the nature of the weapons employed in war. On this point modern practice has rather retrograded. Standard writers of the last century prohibit many means of destruction which would now be resorted to without scruple[2]; and a French captain of the present day would be astonished if he were told, as Admiral Conflans told his captains in 1759, not to use shells, but only *les armes généralement employées par les nations policées*[3].

Jomini, the great authority on tactics, is shocked at the deadly nature of the weapons invented of late years, which, he says, will increase a hundredfold the carnage of war: "as if such hecatombs as those at Eylau, Borodino, "Leipsick and Waterloo, were not enough to decimate "the populations of Europe[4]."

It is, however, useless to object to a weapon because it is effective; and if the duration of a war depends upon a certain number of men being put *hors de combat*, the more rapidly that object is accomplished the better in the interests of humanity.

A more tenable ground of complaint is, that the weapons provided by modern mechanical science are calculated to cause suffering and mortality infinitely in excess of what is needed to disable troops for present military service. There can be no doubt that wounds inflicted by conical bullets, fired from rifled barrels, are far more dangerous

[1] See Parl. Papers, and for the protocols, *Nouveau Recueil Général*, t. xx. pp. 400–434. For the subsequent negotiations see *Nouveau Rec. Gén.* t. xviii. pp. 619-627 and Parl. Papers, 1870 [c. 210], p. 49. In 1870, arts. 6–15 were issued by the Admiralty to the Navy, with an intimation that they were only provisionally adopted.

[2] See Martens, *Précis*, § 273 n.; Klüber, *Droit des gens*, § 244.

[3] Ortolan, *Diplomatie de la mer*, ii. p. 32.

[4] *Précis de l'art de la guerre*, i. p. 114.

than those made by the old smooth-bore musket and spherical bullet; and far more severe than is necessary to place the wounded man *hors de combat*[1]. Here, however, the increased range and improved accuracy gained by the new system have rendered a return to the old one out of the question.

On the other hand, a recognition of the uselessness of the suffering which might be inflicted by one particular species of bullet, has led to an international agreement against its employment.

In 1863, a bullet, exploding by means of a cap on contact with a hard body, was introduced into the Russian army, to be used in blowing up ammunition-waggons. The fear that this sort of bullet might be used against troops was increased when, in 1867, a modification of it was proposed, which would enable it to explode without a cap, and on contact even with a soft body; and the consequent reluctance of the Russian General Milutine to sanction the use of the bullet thus modified led to the "International "Military Commission," which in November, 1868, signed the "Declaration of St. Petersburg[2]."

The parties to this Declaration not only renounce the use of any projectile which is either explosible, or charged with fulminating or inflammable matter, and is of a less weight than 400 grammes[3]; but also lay down as general

[1] See an Art. in the *Rev. Contemporaine*, t. lxiv. p. 33, citing Mr. Longmore in the *Weekly Gazette of Medicine and Surgery*, and Dr. Chenu, *Rapport au conseil de santé des armées sur la campagne d'Orient*, p. 625, &c.

[2] See Parl. Papers, 1868-9 [4145], lxiv. p. 659. The signatories were Austria, Bavaria, Belgium, Denmark, France, Great Britain, Greece, Italy, Holland, Persia, Portugal, Prussia and North Germany, Russia, Sweden and Norway, Switzerland, Turkey, and Würtemberg. Other accessions have been received. The protocols of this commission are printed in the *Nouveau Recueil Général*, t. xviii. pp. 450–473. The Prussian Delegate pressed for the adoption of a long list of prohibited means of destruction.

[3] i.e. a little less than 1lb.

principles: that "the only legitimate object which States "ought to propose to themselves in a war is the weaken- "ing of the military forces of the enemy; that for this "purpose, it is sufficient to put *hors de combat* the greatest "possible number of men; that this object would be "exceeded by the employment of weapons which should "uselessly aggravate the sufferings of men who have been "placed *hors de combat*, or shall render their death inevit- "able; that the employment of such arms would therefore "be contrary to the laws of humanity."

III. No one who remembers the story of the Federal prisoners at Libby and Belle-Ile, during the American Civil War[1], will doubt that much remains to be done, before the treatment of prisoners of war shall have been placed upon a satisfactory footing. The feeling that this was the case led, in 1872, to the foundation, at Paris, of a *Société pour l'Amélioration du sort des Prisonniers de Guerre*; to the efforts of which, though they have not as yet resulted in any diplomatic convention, was mainly due the assembling of the Conference of Brussels.

In March, 1874, "encouraged," as it said, "by august "protection," the Society issued a circular to the Governments of Europe, inviting them to send Delegates to discuss the condition of prisoners of war, at a Conference to be held at Paris in the following month of May[2]. In the meantime, however, and while the Powers were debating whether or no they would accept the invitation, Russia came upon the scene; superseding the Society, and at the same time extending its programme.

The Russian Government, by a despatch of April 17, communicated to ours on May 11, proposed that a diplo-

[1] See the *Narrative of Privations and Sufferings of United States' Officers and Soldiers while Prisoners of War in the hands of the Rebel Authorities*, Philadelphia, 1864.

[2] Parl. Papers, 1874 [c. 1010], lxxvi. p. 2.

matic Conference should meet at Brussels in July, in order to consider not merely the position of prisoners of war, but also the general question of the conduct of warfare; the Russian views as to which were embodied in a draft *Projet* enclosed in the despatch [1].

The Society thereupon abandoned its intended meeting at Paris, and the various Governments promised to send Delegates to Brussels. Our own Government gave this promise on July 4; intimating at the same time that its representative would be a military officer, with no power of binding this country. The officer thus appointed on behalf of England was Major-General Horsford, with special instructions:—

1. To guard against the introduction of questions of naval warfare.
2. Not to take part in any discussion upon any points brought forward, which might appear to him to extend to general principles of International Law, not already universally recognized and accepted [2].

The Conference met on July 27. It was attended by Delegates of all the European powers [3]. Baron Jomini, who was elected President, announced that it had no other object than *consacrer les règles universellement admises*; and that differences of opinion would not be recorded in the protocols. On both of these points the first resolutions of the Conference were subsequently departed from.

On August 27 the Delegates signed the final protocol, submitting to their Governments what it was agreed to call, not (as it had been originally described) a *Projet de convention*, but a *Projet de déclaration* [4]. On the understanding that the Delegates signed, "merely as submitting

[1] Parl. Papers, 1874 [c. 1010], lxxvi. p. 6.

[2] Ib. 1875 [c. 1128], p. 2.

[3] The United States received an invitation on July 8, but refused it as coming too late. Parl. Papers, 1874 [c. 1083], p. 8.

[4] See Parl. Papers, 1875 [c. 1128], pp. 132, 151.

"the record of the proceedings, and not as pledging their "Governments in any manner," General Horsford was authorized to sign with the rest[1].

On Sept. 26 the Russian Government proposed that the various Governments, after considering the protocols, should report upon them to the Cabinet of St. Petersburg; which would then decide whether to draw up an Act for adhesion, or to call another Conference[2].

In a despatch dated January 20, 1875, Lord Derby refuses to take any part in the discussion. He complains that, instead of a codification of admittedly desirable usages, innovations were proposed for which no necessity was shown, and in favour of powers which enforce general military service; adding that upon the really important articles it was clear no agreement was possible[3].

Lord Derby's arguments were met by a Russian despatch of Feb. 6, 1875[4]; closing the diplomatic correspondence, but by no means closing the unofficial discussion of the subject, which has been briskly carried on by military men and jurists ever since[5].

What is the nature of the Declaration to which England has been so careful not to pledge herself?

We may remark, in the first place, that its form has been much and justly criticized. Attempting, as it does, to survey the whole subject of military warfare, it is by no means happy in its grouping of topics. This defect, which

[1] Parl. Papers, 1875 [c. 1128], p. 133. [2] Ibid. [c. 1129], p. 1.
[3] Ibid. p. 2. [4] Ibid. [c. 1136], p. 2.
[5] E.g. Ch. Lucas, *La conférence internationale de Bruxelles*, Paris, 1874. E. de Laveleye, *Les Actes de la Conférence de Bruxelles, considérés*, &c., Bruxelles, 1875. Le Général T..., *L'Angleterre et les petits états à la Conférence de Bruxelles*, Bruxelles, 1875. Sir Travers Twiss, Letters in the *Hour*, May, 1875. W. B. Laurence, in the *Albany Law Journal*, January 9, 1875; and papers written by Mr. Mountague Bernard, M. Besobrassoff, M. Rolin-Jaequemyns, M. Moynier, &c., for the *Institut de Droit International*, extracts from which are printed in the *Revue de Droit International*, t. vii. pp. 447-552.

is more conspicuous in the final *Projet* than in the original Russian proposal, is one which might easily be remedied [1].

In the second place, if the original *Projet* be compared with that finally adopted, we at once notice that those portions of the former which laid down any very abstract principles have been omitted from the amended draft; that the section upon reprisals was found too difficult to be dealt with; and that any detailed statement upon the questions raised by the Convention of Geneva, and the Declaration of St. Petersburg, has been carefully avoided. On the other hand, a new article has been added on the internment of troops in neutral territory.

But let us pass on to the contents of the Declaration as finally revised, restricting ourselves to the consideration of its more important topics, or those upon which agreement was found to be most difficult.

1. The actûal conduct of military operations is treated at no great length [2].

The statement that "the laws of war do not concede to "belligerents an unlimited power with reference to the "choice of means of injuring the enemy," would hardly seem necessary, did we not remember the startling cynicism of Bynkershoek upon this point [3], and the not dissimilar views maintained not so long since by Mr. Beach Lawrence [4].

The use of weapons causing unnecessary suffering is prohibited in general terms, but the specific prohibition, contained in the Russian draft, of the use of pounded glass is omitted, and the St. Petersburg Declaration is adopted merely by reference [5].

[1] See the suggestions of Mr. Bernard and M. Moynier, mentioned in the preceding note.

[2] Arts. 12–18.

[3] *Quæst. Iuris. publici*, l. c. 1.

[4] In a letter addressed to M. Rolin-Jaequemyns; see the *Rev. de Droit International*, t. vii. p. 526.

[5] 12, 13.

The articles upon sieges[1] provide for notice being given, if possible, before a bombardment; that "open" towns shall not be bombarded at all; and declare that a town taken by assault ought not to be given up to pillage.

2. A good many articles are devoted to the powers and duties of an invading army in the enemy's country[2]. The invader in an "occupied territory," which is defined as one "placed, as a matter of fact, under the authority of "the hostile army," is considered, for some purposes, to stand in the position of the Government of the invaded district. He may collect certain taxes, and has to provide for the administration of justice; he may take for his own use all public moneys and warlike stores. He should respect private property as a rule, but may seize railways, telegraphs, and other property useful in warfare; may raise forced contributions, which should however not be oppressive in amount; and may make requisitions for the support of the army, for which either payment or a receipt should be given.

3. The articles upon modes of intercourse between enemies, technically known as "commercia belli[3]," and the new articles on internment by neutrals[4], are comparatively unimportant.

4. Many articles[5], some of them placed under rather inappropriate headings, deal, directly or indirectly, with what is in reality the most important of all the questions to which the Declaration attempts to give a solution—viz. the position of persons who fall into the power of the enemy.

I am inclined to suggest that this topic would be best treated, by ascertaining first what are the rights and liabilities of persons who are "prisoners of war," properly so called,—and then what classes of persons are entitled

[1] 15–18. [2] 1–8, 36–42. [3] 43–52. [4] 53–56.
[5] 9–11, 19–35.

to greater, and what classes to less, indulgence than prisoners of war.

i. "Prisoners of war," under which term are included wounded, and persons accompanying an army as newspaper correspondents, contractors, and so forth (if properly identified), and also irregular combatants, fulfilling certain conditions,—are declared to be in the power of the hostile Government, not of its subjects. The important principle is laid down that: *ils ne peuvent être enfermés*. They may be employed on work not directly bearing upon the operations in the theatre of war, and not humiliating. They should be fed and otherwise treated as well as the troops of the country which made them prisoners. If released on parole, their own Government may not accept, still less require, their military services during the continuance of the war[1].

ii. Among the persons who, if they fall into the hands of the enemy, are treated with greater indulgence than ordinary prisoners of war, are not only the ordinary peaceful inhabitants of an invaded country, but also surgeons and others coming under the protection of the Geneva Convention, to which the Declaration adds nothing[2].

iii. With less indulgence are treated of course spies; but scouts, or bearers of despatches, going without disguise through the enemy's lines, and persons passing over the enemy's lines in a balloon, are not to be considered to be spies[3]. Marauders and assassins, equally of course, are liable to rigorous treatment; but the crucial question of all those discussed by the Conference, arises when it becomes necessary to distinguish between such criminals and persons who, without forming part of the regular army, yet claim to be treated as honourable combatants[4].

A cartoon appeared in *Punch*, at the time of one of

[1] Arts. 23, 24. [2] 35. [3] 22. [4] 9, 10.

those invasion panics which some years ago used to recur periodically. It represents a squadron of French cavalry brought hopelessly to a standstill, at a hedge and ditch lined by Kentish villagers armed with scythes and pitchforks.

We have here a somewhat grotesque representation of resistance offered to an invading army by the ordinarily peaceful inhabitants of a country. At first sight, one is as much gratified by the patriotic ideas suggested by the picture, as amused by the skilful contrast between English bumpkins and French dragoons: but, apart from the criticisms which professional soldiers are not averse to making upon amateur warfare, even of a much higher type than that depicted in the cartoon, international lawyers interpose with the gravest doubts of the expediency of allowing the population of an invaded country to mix itself up with the operations of war[1]. The reasons are obvious. Not only has guerilla warfare an irresistible tendency to degenerate into cruelty; but the indulgence which modern usage shows to an unarmed population can be extended to it only while a military commander can feel tolerably sure that the peasants who are now asking to be protected in the cultivation of their fields, will not a few hours hence be cutting off his stragglers, or suddenly opening fire from their cottage windows upon a detachment as it enters a village[2].

Continental writers speak very plainly of the rigour which may be exercised in such cases, and the Duke of Wellington was perfectly ready to act in accordance with their doctrines. He proclaimed that he would not allow people "to play the part of peaceful inhabitant and soldier

[1] Cf. Dr. Arnold, *Lect. on Mod. Hist.*, p. 160.

[2] Halleck, p. 793, goes so far as to say: "They are virtually in the "position of prisoners of war upon parole,... only upon that condition "would the conqueror have relinquished the extreme right which he "held over their lives."

"by turns." And in a letter accompanying the proclamation, he says: "I will do as the French did towards the "towns and villages in Spain and Portugal, i.e. I will "totally destroy them, and hang up all the people belonging to them[1]."

The Brussels Declaration demands, as a rule, that all combatants shall (besides carrying arms openly and conforming to the laws and customs of war,—upon neither of which requirements could any doubt arise,)

1. Have at their head a responsible person, (the original draft required that they should also be under the orders of the central Government).
2. Bear a distinctive military sign, fixed, and recognizable at a distance.

By way of exception, it allows that the population of a territory not occupied, which at the approach of the enemy spontaneously takes up arms to fight the troops of the invasion, without having time to organize itself in the manner required shall, as a rule, be "considered as belligerent," if it respects the laws and customs of war. It may be remarked, that this Article leaves it to the commander of the invading army to determine: whether a district is *occupé* or not; and whether or not its inhabitants have had time to provide themselves with responsible commanders, and with marks of a military character.

The Delegates of the smaller states spoke strongly at the Conference against the policy of these articles. The Belgian Delegate, for instance, while admitting that acts of severity always occur in war, and must often be acquiesced in, protested against the attempt to cover such acts by a general rule. "If," he said, "citizens are to be "sacrificed for having attempted to defend their country

[1] Gurwood's *Despatches*, xi. p. 484; Napier, *Hist. P. War*, vol. vi. p. 421.

"at the risk of their lives, they ought not to find, written "over the stake at which they are to be shot, the article of "a Treaty signed by their own Government, containing "their condemnation to death beforehand[1]." Let us look somewhat more closely at the two requirements.

As to the first of them: whatever may be thought of the Russian suggestion, that all combatants shall be under the orders of the commander-in-chief, it is obviously reasonable that they should be so far organized, as to be under the orders of some ascertainable individual; and such an individual may fairly be, in some sense or other, "respon- "sible for his subordinates[2]."

The second requirement carries out the principles, which, as principles, can hardly be disputed, that persons are not entitled, by sudden changes of character, to combine the advantages of combatants and of peaceful inhabitants; and that the two classes ought to be readily distinguishable, even at some distance.

It is, however, one thing to admit that the principles involved in Art. 9 of the Declaration are in themselves reasonable: it is another thing to be prepared to accept the application which has been made of them by the article; or even to allow that the time has yet come for their application being defined in a way which can be generally accepted. In the opinion of the greater military powers, Arts. 9 and 10 are, whether compared with existing practice, or with what is alleged to be well-established theory, a concession to the interests of an invaded population. On the other hand, what may be called the "non-aggressive" countries of Europe, are extremely suspicious of the policy of these Articles. England, the Netherlands, Belgium, Switzerland and Spain, believe that its adoption must either diminish the defensive power of such States, or

[1] Parl. Papers, 1875 [c. 1128], p. 92.

[2] But the German Delegate means by this: "one who is acquainted "with the laws of war."—Ibid. p. 83.

oblige them to organize a system of universally compulsory military service[1].

This latter consequence is indeed frankly recognized by the apologists of the Articles[2]. It is felt by the opponents of the Declaration to be an intolerable interference with national independence, and confirms their opinion that the interests of invaders and invaded are in reality irreconcileable. Such, indeed, would be the conclusion which is naturally suggested by recent history[3] but which is still more cogently supported by cases in which invaders and invaded have within a short period exchanged places. In 1813, the Prussian Landsturm was ordered to be in readiness to turn out to resist the French. They were to be distinguishable merely by wearing a cap and belt, were to fire from behind hedges, and, should the enemy appear in force, were to lay aside the traces of their military character. Napoleon declared that he would treat these men as brigands; and yet, in the following year, he called upon the French peasantry to rise with still less organization; and it was Blucher's turn to threaten that such levies would not be treated as prisoners of war[4].

On the whole, it is still an open question, whether or no the adoption of Arts. 9 and 10 of the *Projet* would alter for the worse the defensive power of countries in which universal military service is not compulsory. If there be even a suspicion that this is the case, we must be grateful to our Government for having held aloof from the Declaration. On the other hand, it is impossible not to feel the force of the main argument used by the

[1] Parl. Papers, 1875 [c. 1129], p. 4.

[2] E. g. by the author of *L'Angleterre et les petits États*, pp. 18, 76, 80; and by Professor Martens in the *Revue de Droit International*, t. vii. p. 486.

[3] See the Essays of M. Rolin-Jaequemyns in the *Rev de Droit International*, t. ii. p. 660; iii. p. 308.

[4] See the authorities collected in a paper by Mr. H. R. Droop, in the *Transactions of the Juridical Society*, vol. iii. p. 718.

supporters of the *Projet*; that it is the stronger power which will always gain by the absence of a definition of its rights; or to deny that the proposed rules are in several respects a marked improvement both on previous theories and on existing practice.

The conclusions which I would venture to draw from the history of the Brussels Conference, and of the Conferences which preceded it, are the following:—

1. That the time is not yet ripe for the codification of the laws and usages of war. An agreement as to the matter of which a body of law ought to consist should precede any attempt to improve its form, and an agreement as to the conduct of warfare can hardly be expected, while the subject cannot be discussed without at once disclosing widely-divergent views of national interest, and recalling bitter memories of still recent national suffering.

2. That the International definition of rules upon those subjects with reference to which agreement already exists, is both possible and desirable. There seems really no reason why, if the Brussels Conference had confined its attention to regulating the treatment of prisoners of war, it might not have added a useful chapter to those already contributed to the conventional Law of Nations by the Conferences of Geneva and St. Petersburg.

3. That a more general codification in the future would be facilitated, if each nation were to have drawn up, for the guidance of its armies in the field, a body of rules, such as those prepared by Dr. Lieber, and issued to the armies of the United States by President Lincoln.

4. That every Government should take care that instruction is given to its military officers in all those rules for the mitigation of the horrors of warfare which it considers as proper to be observed. It would seem that no such instruction is given in the British army; and the consequences of its neglect in the French army were

much complained of by the Germans during the war of 1870[1].

It must be clear to any one who has followed the discussions upon this subject, that we in England underrate the importance attached on the Continent to formulas.

The English mind, by nature averse to definition and careless of method, is in danger of treating as pedantic what on the other side of the Channel is the universally accepted mode of discussion. We do not sufficiently consider that the statesmen and jurists of the rest of Europe are accustomed to live under codes, are fond of abstract statements, and employ, as a matter of course, a terminology adapted from Roman law, which is convenient, because at once precise and generally intelligible.

We ought therefore to be careful not to undervalue continental opinion, merely because it may be expressed in language which appears needlessly abstract and technical. Nothing should induce us to surrender any mode of warfare which we believe to be essential to our safety; but there may be cases in which a proposed International Declaration may strike us as superfluous or ill-expressed, and yet our adhesion to it may be desirable, if only as a step towards that mutual good understanding of the nations, which is the best safeguard of peace.

[1] Bluntschli, § 586. It is supposed that instructions of a similar character to those prepared by Dr. Lieber have been issued in the Prussian service, but their contents have not been made public. *The Germans in France*, by H. Sutherland Edwards, 1874, pp. 9, 288, 306. Cf. infra., p. 81.

IV

THE PROGRESS TOWARD A WRITTEN LAW OF WAR[1]

THE branch of International Law which attempts to set bounds to the cruelties of warfare, as it was the first to be systematically discussed, so does it bid fair to be the first to take shape in a written code.

The need for some precise and authoritative statement upon the subject has become more and more manifest to those who interest themselves in such questions. Not a little of the bitterness of recent struggles has been due to differences of opinion between the belligerents, as to the rules which international law enjoins for the conduct of military operations, and as to the manner in which those rules have been, in point of fact, observed by their respective armies.

The Franco-Prussian War was especially fertile in controversies of this kind. Prussia began by announcing that, in accordance with the action of all the belligerents in the War of 1866, she would refrain from the capture of private property at sea; and she affected to consider as

[1] A lecture delivered in 1880. *Colburn's United Service Magazine*, January, 1881.

a violation of the Law of Nations the conduct of France in declining to be bound by a new rule, which would have cancelled the effect of French naval superiority. Accordingly, when France, in the exercise of her otherwise unquestioned rights, confiscated merchant vessels and detained their crews as prisoners, Count Bismarck, by way of reprisals, imposed a heavy fine on the occupied districts of France, and sent off forty notables to be kept as prisoners of war at Bremen. There was also a discussion as to the lawfulness of sinking prizes, instead of taking them into port for condemnation; but the operations on land afforded a much fuller series of illustrations of the vexed questions of international law. Formal complaints were repeatedly made by each belligerent of the conduct of the other, and the newspapers on both sides were filled with angry recriminations.

In the French Senate, M. Leverrier, the celebrated astronomer, spoke of the Germans as no longer carrying on "une guerre régulière, mais une guerre de sauvages." Later, M. de Chaudordy wrote, that "Prussia conducts to "a war of extermination her troops transformed into hordes "of marauders. She has profited by modern civilization "only to bring to perfection the means of destruction." False rumours and exaggerations abounded: that a franc-tireur had been burnt alive; that 80 per cent. of the French prisoners in Germany had died from ill-treatment in three months.

The official statements on the part of the French may be found in a despatch of the Minister for Foreign Affairs, August 30, 1870; in despatches by M. de Chaudordy, of November 29, 1870, and January 25, 1871; and in a despatch by M. Jules Favre, of January 11. The complaints of the Germans may be read in an article of the Prussian *Staatsanzeiger* of August 26, and in despatches of the Prussian Under-Secretary, M. de Thile, and of Count Bismarck, dated December 14, January 9, and February 17.

One of these documents from either side will serve as specimens for the rest.

The French Minister, in August, 1870, complains:—(1) That an ambulance named "de la Presse" had been carried off into Germany with all its *personnel* and *matériel*. (2) That the Baron de Bussière had been made prisoner while working with the ambulance which he had organized in the neighbourhood of Strasburg. (3) That a surgeon had been killed while attending to a wounded man. (4) That the German troops had used explosive bullets. (5) That peasants in the neighbourhood of Strasburg had been forced to work at the trenches directed against that town. (6) That the Red Cross had been abused to cover the treasure carts and provisions of the Prussian Army.

M. de Thile, on the other hand, reproaches the French with:—(1) Bombarding open towns. (2) Omitting to give any instructions to their troops as to the Geneva Convention. (3) Omitting to protect their surgeons with the Geneva Cross. (4) Employing Turcos. (5) Firing upon flags of truce.

Other topics are touched upon in other despatches; the questions most debated being violations of the Geneva Convention, and of the St. Petersburg Declaration against explosive bullets; the bombardment of open towns; the treatment of enemies captured in balloons, and of hostages; but more especially the position of franc-tireurs and other irregular combatants, and the exercise of authority by the invading army in the territory of which it is in "occu-"pation."

In studying the labyrinth of charges and counter-charges, it is refreshing to find that there are points upon which there is no controversy. While in many cases there is a difference of opinion as to the rule which is dictated by international law, in the majority of cases both sides are agreed as to the rule, and are at issue only as to the fact of its having, or not having been, duly observed.

The questions raised during the war between Russia and Turkey were of a similar character, though less various. We used to hear again of the sinking of prizes; of the use of explosive bullets; of disregard, or a fraudulent use, of the Geneva Cross, and especially of the massacre and mutilation of prisoners, and the employment of savage and undisciplined auxiliaries. The complaints came from both sides, though those coming from the Russians found more credence, and were, indeed apparently better founded.

The questions which arose as to the Geneva Convention were complicated by the discovery (which ought to have been made before) that the Mussulman troops could not be dissuaded from regarding the Cross, which the Convention assigns by way of a protecting mark to surgeons and hospitals, as a Christian, and therefore hostile, emblem. The Porte attempted to meet the difficulty by distinguishing its own medical staff by a red crescent on a white ground; at the same time ordering its troops to respect the Red Cross flag of the enemy.

The experience of the last two great European contests thus shows how necessary it is that troops should receive instruction in the laws of war; but before this can be done, those rules must be ascertained and reduced to writing.

A written statement of this, as of any other, branch of the law of nations can, of course, become binding only by means of convention; since treaty-making on a large scale is the only substitute for legislation available to a group of independent political communities. On a former occasion I have called attention to some of the results which have been attained in this direction by the Declaration of Paris, the Convention of Geneva, and the Declaration of St. Petersburg[1]. These diplomatic acts, relating respectively

[1] Supra, p. 59.

to the conduct of maritime warfare, to the relief of the wounded, and to the use of explosive projectiles, might fairly be considered, but for the fact that some of their provisions have not received the adhesion of two or three States of importance, as isolated sections, inscribed in the otherwise blank pages of an international code.

It is no doubt highly desirable that these sections should be incorporated into a statute which should deal in a connected and exhaustive manner with the whole subject; but the drafting of such a statute would be a matter of extreme delicacy. Upon some of the questions involved national interests are divergent, and upon many more there is a conflict of opinion. Maritime States are opposed to States whose strength lies elsewhere than on the sea; States whose circumstances permit them nearly to dispense with armed forces in time of peace, to States less happily situated; States which recruit their armies by universal conscription, to those which only rely upon voluntary enlistment; small States to large ones.

A few instances will illustrate this. The United States of America, reluctant to deprive themselves of a ready means of supplementing their normally small navy, have refused to accede to the principle of the Declaration of Paris that "privateering is and remains abolished." England, on the other hand, is not prepared to accept the view which, after being long advocated by the United States, is now the prevalent view upon the continent, in favour of the exemption of the private property of enemies from capture at sea. So jealous is our country of being committed to any concession upon this point, that the Government only consented to send a delegate to the Conference of Brussels, upon the understanding that questions of maritime warfare were to be entirely excluded from its deliberations. A similar feeling on the part of England was the main obstacle to the ratification of the second Geneva Convention, of 1868, which provides for

the neutralization of persons and ships engaged in the relief of sufferers from fighting at sea[1].

The differences of view which exist with reference to the conduct of warfare upon land are no less marked. A degree of strictness in defining the classes of persons who will be recognized as legitimate combatants, or in prescribing the obedience due to the invader from the inhabitants of an occupied territory, may seem perfectly natural to a Great Power, recruiting its vast armies by compulsion, while it may be thought intolerable by a small country, which relies for its safety upon mountain passes, capable of being defended by a handful of peasantry.

It was upon such questions that the Brussels Conference of 1874 made shipwreck[2]; and the difficulties in the way of any general scheme, to be elaborated by diplomacy and imposed by treaty upon the civilized world, appeared for the moment to be insurmountable.

But another course remained to be tried. The desired result might be as surely, though less rapidly, approached, if each nation would frame for its own armies a statement of such rules of warfare as it thinks proper to be adopted, including of course those rules to which it is already committed by treaty; leaving to time and discussion the work of assimilating the bodies of rules to one another and to the ideally perfect type.

It is to this latter alternative that those military men and jurists who are most anxious that the usages of war should be systematized and reduced to writing, in order to their being better known and better observed, have of late years chiefly turned their attention.

When the Brussels Conference separated without having attained to any diplomatically binding result, the only nations which, so far as I am aware, had compiled authoritative regulations with reference to the topics which it

[1] Supra, p. 64.

[2] Supra, p. 69.

had discussed, were the United States of America, and Germany.

The first body of rules of the kind was that promulgated in 1863 by the Northern States of America, for the guidance of the Federal armies in the Civil War. It had been drawn up at the request of President Lincoln by the eminent publicist Dr. Lieber, and was sanctioned by a general order to the effect that "the following 'instruc-" 'tions for the government of armies of the United States " 'in the field,' prepared by Francis Lieber, LL.D., and " revised by a board of officers, of which Major-General " E. A. Hitchcock is president, having been approved by " the President of the United States, he commands that " they be published for the information of all concerned."

The several sections deal with (1) Martial law and retaliation. (2) Enemy property, protection of women, &c. (3) Prisoners, hostages, booty. (4) Spies, insurgents. (5) Safe conduct, flag of truce. (6) Exchange of prisoners. (7) Parole. (8) Armistice. (9) Assassination. (10) Civil War. These instructions are perhaps unnecessarily long and minute. They are not well arranged, and are certainly more severe than the rules which would be generally enforced in a war between two independent states.

The German regulations, though known to exist, are in the nature of confidential instructions to officers. They were in existence in 1870, and probably more or less resemble the instructions published in that year by Professor F. Dahn. Something is also contained upon one branch of the subject in the military penal code of the German Empire of 1872, which prescribes punishments for pillage and for ill-treatment of the wounded, but is less explicit upon these topics than the Prussian military code, which it superseded.

Since 1874 the movement in this direction has been more active.

At the outset of the war with Turkey a ukase of the Russian Government, May 12-24, 1877, ordered all functionaries of the empire to observe the Geneva Convention, the Declaration of St. Petersburg, and the principles laid down in the draft prepared at the Brussels Conference. In June of the same year a catechism setting forth these principles in simple language was published in the official Gazette, and thousands of copies of it were distributed in the army. In July the same Government promulgated a temporary *règlement* for the treatment of prisoners of war, containing minute provisions of a very liberal character.

In the same year a little volume appeared under the authority of the French Government, with the title, *Manuel de Droit International à l'usage des officiers de l'armée de terre—ouvrage autorisé pour les écoles militaires.* It is understood to have been compiled by M. Billot. It consists of two parts. The first treats of "Hostilities," and contains four titles, dealing respectively with the means of injuring the enemy; with combatants, spies, and the wounded; with military conventions; and with prisoners of war. The second part, entitled "De l'Occupation," consists of four titles, treating successively of the powers, and of the duties of the occupying force; of persons, and of property.

As far back as 1871, General Den Baer Poortugael, since Minister of War for the Netherlands, besides a treatise upon the law of war, drew up also a practical manual upon the subject for the use of officers. His Government, without giving direct sanction to either work, ordered that they should be used as text-books for the instruction of officers.

The draft *Militärstrafgesetz*, prepared for the Government of Switzerland by Professor Hilty, of Berne, and published by him in 1878, contains, under the head of "Kriegsrecht," a set of rules for the proper conduct of warfare.

The Danish Parliament has discussed a similar project, and the question has been under the consideration of the Governments of Italy and Spain. I believe I may add that it has also engaged the attention of our own War Office[1].

Much will have been gained, when the movement, of which we have seen the beginnings, shall have been completed: when every civilized State shall have supplied its troops with such instructions as it may think fit for the conduct of warfare.

The object next to be kept in view should be the assimilation of these national instructions to a common international type. Upon many of the questions of which they treat, international law speaks with a certain voice, but upon other questions it is silent, or gives replies which are understood in different senses. In what way are the doubts thus arising to be resolved, and the resulting differences between the instructions issued by different nations to their respective armies to be made to disappear? There is but one way, scientific discussion: the reasoned speech or writing of men whose words have influence upon the opinion of nations and the action of governments.

An attempt has of late years been made to bring, as it were, to a focus the authority of such reasoned speech or writing upon questions of international law. A sort of academy of persons devoted to the study of these

[1] The Servian Government issued a manual for the use of officers in 1878, and the Spanish Government in 1893 prescribed the use in its military academies of a *Cartilla de leyes y usos de la guerra*, mainly founded upon a draft which had been adopted by a congress of officers, representing the armies of Spain, Portugal, and the various Latin states of South and Central America, held at Madrid in 1892. The British Government has so far been satisfied with the insertion, in its *Manual of Military Law*, published in 1883, of a chapter upon "The Customs of War," which is expressly stated to have no official authority.

questions has been gathered together from all quarters of the world, under the style of the "Institut de Droit "International"; and this body has paid great attention, with the practical result which I am about to relate, to developing and systematizing the rules of warfare. But first, a word or two upon the composition of the "Institut," which, by the way, held its annual meeting at Oxford in 1880. The first suggestion of such a body was contained in a letter addressed, in September, 1871, by Dr. Lieber, of New York, to M. Rolin-Jaequemyns, of Ghent, the founder and editor-in-chief of the *Revue de Droit International*, and now the legal adviser of the King of Siam. M. Moynier, of Geneva, almost at the same time made a communication to M. Rolin to the same effect.

In March, 1873, M. Rolin acted upon these suggestions, by sending a confidential circular to a number of representative International lawyers, a dozen of whom met at Ghent in September of the same year, and founded the "Institut de Droit International." According to the statutes then drafted, the "Institut" was to be a purely scientific association, consisting of fifty full members, and a body of associates. "International law," said M. E. de Laveleye, in a memoir which he wrote upon the occasion, "has hitherto been developed by two methods: first, by "diplomatic action; secondly, by the scientific action "of individuals, i. e. by works written for the purpose of "formulating the whole or part of the rules which the "author believes to be followed, or thinks should be fol- "lowed, in the relations of State to State. But these two "methods make but slow progress, and often encounter "in practice nearly insurmountable obstacles. There is "room for a new influence: the collective scientific action "of a permanent body, without official character, com- "posed of specialists belonging as far as possible to "different countries, and devoting themselves to ascertain "and define the rules of justice, which they recognize as

"the rightful base of the relations of people to people. It "is with this object that we have founded our Institute."

The original members proceeded to co-opt suitable colleagues, and it was arranged that committees should be appointed for the examination of special questions, and should present their several reports to the full meeting, which was to be held once a year, in September. The first annual meeting was held at Geneva, in 1874, and meetings have since been held at the Hague, at Zürich, at Paris (*bis*), Brussels (*bis*), Oxford, Turin, Munich, Heidelberg, Lausanne, Hamburg, Geneva, Cambridge, Venice, and Copenhagen. The office of President has been held by MM. Mancini, of Rome; Bluntschli, of Heidelberg; de Parieu, of Paris; Rolin-Jaequemyns, of Ghent; Bernard, of Oxford; Pierantoni, of Rome; von Holzendorff, of Munich; von Bulmerincq, of Heidelberg; Rivier, of Brussels; von Bar, of Göttingen; Moynier, of Geneva; Renault, of Paris; Westlake, of Cambridge; Brusa, of Turin; Goos, of Copenhagen.

The action of the Institute in the matter of the laws of war dates from its first meeting.

A committee was appointed at Geneva to study the results arrived at by the Conference of Brussels, and it did its work in a very thorough manner. The *rapporteur*, or chairman, of the Committee, drew up a long list of questions, covering all the topics dealt with by the Brussels Conference, and received in reply valuable communications from his colleagues. He presented an analysis of these communications, together with a reasoned report of his own, to the Hague meeting in 1875, and the Institute, after a long discussion, adopted a series of resolutions expressing a general approval of the Brussels draft, and a wish that the Powers should cause instructions to be given to their respective armies in the rules of international law.

In 1877 the Institute went so far as to communicate to the belligerent Governments some observations on the contraventions of international law which undoubtedly occurred in the conduct of the war between Russia and Turkey, and to express its hope: (1) that the Powers would bind themselves by treaty to an observance of the laws of war; (2) that the example set by England of sending military attachés to report to neutral governments upon violations of international law during a campaign, would be generally followed; (3) that Governments would take steps to bring the laws and usages of war to the individual knowledge of their officers and soldiers; (4) that, as a guarantee for this having been done, every officer, before entering upon a campaign, should sign a declaration that instructions as to the laws of war have been read to him, and that he has received a copy of them.

At the Paris meeting in 1878, the Secretary-General, in his annual report, mentioned as desirable "a study of "the codes and regulations which the Governments of the "various countries have recently caused to be compiled "for their armies, prescribing the observance of the laws "and customs of war." The standing committee on the laws of war was accordingly empowered to examine this question, and its report was read by its chairman, M. Moynier, at the Brussels meeting in 1879. The Institute, having thus obtained information as to the steps which had been taken for the instruction of troops in their international duties, and finding that but slight progress had been made in this direction, determined to draw up a Manual of the Laws of War, which might serve as a sort of model to Governments desirous of legislating on the subject.

The task of preparing it was entrusted to the standing committee. The Manual was to be compiled after a comparison of the Geneva Conventions of 1864 and 1868,

the St. Petersburg Declaration of 1868, the Brussels Project of 1874, the Hague resolutions of the Institute, and the instructions prepared for the use of the respective armies of the United States, France, Russia, and the Netherlands.

With these materials before him, M. Moynier set to work, and by February, 1880, had produced an excellent draft, of which he sent a copy, with explanatory memoranda, to every member of the Institute. Criticisms and suggestions were forthcoming in great abundance, and M. Moynier profited by many of them in preparing a second draft, which was circulated in the same way as the first had been. In June the committee assembled from all parts of Europe at M. Bluntschli's house at Heidelberg, and sat during several days, considering very carefully the second draft, and the criticisms that had been made upon it. A third draft, as amended by the committee was then printed and circulated. Early in September the committee again sat at Oxford, and put the draft into the final shape in which it was to be submitted to the Institute, to be accepted or rejected. On September 9, the Institute, in full session, adopted the work as its own, and ordered that a copy of it should be sent to the principal Governments, with a letter respectfully representing that it is the duty of every nation to issue some such body of instructions for the use of its armies[1].

The Manual is divided into three parts, of which the first lays down general principles, the second applies them in detail, and the third relates to the punishment which the laws of each country ought to prescribe for violations of them.

The style and method are the result of a compromise.

[1] See *L'Annuaire de l'Institut de Droit International*, i. pp. 35, 47, 90; ii. pp. 131, 138, 141, 154; iii. pp. 311, 312, 326; v. pp. 150, 156.

If a French or German jurist were left to himself, he would probably begin with some highly abstract proposition, from which the subordinate rules would be logically deduced. The text as it stands plunges at once into the subject, by laying down that acts of violence are permissible in warfare only between the armed forces of the belligerent States. A definition is therefore necessary of the armed forces of a State. These are said to comprise: (1) The army, properly so called, including the militia; (2) the national guard, landsturm, free corps, and other corps, provided they unite the characteristics of (*a*) being under a responsible chief, (*b*) having a uniform, or distinctive mark, which is fixed and recognizable at a distance, (*c*) carrying their arms openly; (3) the crews of ships of war; (4) the inhabitants of an unoccupied country who, on the approach of the enemy, take up arms spontaneously and openly to fight the invader, even although they have not had time to organize themselves.

Another important principle relates to the legitimate object of warfare; which, in the words of the St. Petersburg Declaration, is defined to be "the weakening of "the military forces of the enemy." Hence the illegality of severities which are unnecessary for the attainment of this object.

The statement that the authority of the invader in an occupied territory is a mere *pouvoir de fait*, and *essentiellement provisoire*, is the key to a number of the subordinate rules which apply to this important topic.

The body of the work, which consists of an application in detail of these general principles, deals successively with hostilities, with occupied territory, with prisoners of war, and with troops interned in a neutral territory.

Hostilities are considered with reference, first to persons and secondly to things. Under the former heading come such topics as the treatment of the inoffensive population; weapons and other means of injuring the enemy; the

wounded; prisoners of war; spies and flags of truce. Under the latter, pillage; the bombardment of towns; and the treatment of ambulances and medical stores.

A territory is said to be "occupied," when, in consequence of its being invaded by the forces of the enemy, the State to which it belongs has ceased, as a matter of fact, to exercise there a regular authority, and the invading State is alone in a position to maintain order there. The limits within which this is the case fix the extent and the duration of the occupation.

Then come rules as to the rights and duties of the army of occupation towards persons. May it oblige civil functionaries to continue to perform their duties? how far may it force the inhabitants generally to render services? May it oblige them to take an oath of obedience? What may be done in case of local insurrection?

Under the heading of the rights and duties of the occupant in respect of things, we find rules as to the kinds of public property which may be seized by the invader; the limits of his rights over State forests; the inviolability, in general, of private property, subject to exceptions with reference to railways, telegraphs, and stores of arms and ammunition, and also to the right of the invader to levy requisitions and contributions.

The rules with reference to prisoners of war, deal with the means which may be taken to prevent their escape; the kinds of work which may be required of them; the expense of their maintenance; the consequences of an attempt to escape; their exchange and release upon parole.

The chapter upon the internment of troops which have been obliged to cross the boundaries of a neutral territory, as the army of Bourbaki was forced to enter Switzerland during the Franco-Prussian war, is occupied with rules as to their disarmament, detention, and maintenance by the neutral power.

The third and last part of the Manual, besides dealing

briefly with the sad, though unavoidable, topic of military reprisals, in which the innocent may often suffer for the guilty, suggests a clause which would incorporate by reference such legislative provisions as each State may think fit to make for the punishment of offences against the laws of war.

The work to which attention has been called, which was published in the usual way after copies of it had been forwarded to the several Governments[1], is, I think, interesting for two reasons:—

First, as a sample of what may be done by the "collective "scientific action" which, as M. de Laveleye wrote, it is the object of the Institute to promote. Having had the honour of serving on the committee by which the Manual was prepared, and thus of watching its gradual improvement at each stage of its growth, I was much struck by the advantage of getting a number of competent persons to work simultaneously upon one subject, even when oral discussion of their differences of opinion was only partially possible. It was surprising to see how, when a phrase had been carefully considered for months, it was still possible for a fresh mind to make a suggestion for its amendment, which every one at once saw to be an improvement.

Secondly, the Manual is interesting as preparing the way for a generally accepted written law of war. It has at least called the attention of the various Governments to the duty of promulgating authoritative instructions upon

[1] It was published while these pages were first passing through the press, as *Les Lois de la guerre sur terre. Manuel publié par l'Institut de Droit International.* Bruxelles et Leipsic, Librairie C. Muquardt, Merzbach et Falk, Editeurs-Libraires de la Cour, 1880. On the subsequent history of the Manuel, see Holzendorff, Handbuch des Völkerrechts, iv. p. 328, and *Revue de Droit International*, t. xiii. p. 306. For the correspondence of von Moltke and Bluntschli on the subject, see *Revue, u. s.*, p. 79.

the subject for the use of their armies; and it may perhaps serve in some measure to shape such instructions as may be issued in the future, and to modify those which are already in existence. Our own Government is not too ready to systematize, and has been hitherto content in these matters to "trust to the good sense of the British "officer"; but the powers that be are less disinclined now than was formerly the case to take a hint from what is going on in other countries. The British officer himself would, I am convinced, be the first to rejoice if our Manual, or some body of instructions resembling it, were made generally known to the troops which he is called upon to command.

V

THE BOMBARDMENT OF OPEN COAST TOWNS

ARE undefended coast towns exposed in time of war to dangers from which undefended inland towns are exempt?

The following papers, relating respectively to the Naval Manœuvres of 1888, to a controversy which took place with reference to the Hague in 1890, and to resolutions voted by the "Institut de Droit International" in 1896, are intended as a contribution towards the discussion of this question. They will perhaps almost sufficiently explain themselves.

1. THE NAVAL MANŒUVRES OF 1888.

Three Letters to the Editor of the 'Times.'

SIR,—I trust we may soon learn on authority whether or no the enemies of this country are conducting naval hostilities in accordance with the rules of civilized warfare. I read with indignation that the *Spider* has destroyed Greenock; that she announced her intention of "blowing "down" Ardrossan; that she has been "shelling the fine

"marine residences and watering-places in the Vale of "Clyde." Can this be true, and was there really any ground for expecting that "a bombardment of the outside "coast of the Isle of Wight" would take place last night?

Your obedient servant,

T. E. HOLLAND.

ATHENAEUM CLUB, *Aug.* 7.

SIR,—In a letter which I addressed to you on the 7th inst. I ventured to point out the discrepancy between the proceedings of certain vessels belonging to Admiral Tryon's fleet and the rules of civilized warfare. Your correspondent on board Her Majesty's ship *Ajax* yesterday told us something of the opinion of the fleet as to the bombardment and ransoming of defenceless seaboard towns, going on to predict that, in a war in which England should be engaged, privateers would again be as plentiful as in the days of Paul Jones, and assuring us that in such a war "not the slightest respect would be paid to old-"fashioned treaties, protocols, or other diplomatic docu-"ments." Captain James appears, from his letter which you print to-day, to be of the same opinion as the fleet, with reference both to bombardments and to privateers; telling us also in plain language that "the talk about "international law is all nonsense."

Two questions are thus raised which seem worthy of serious consideration. First, what are the rules of international law with reference to the bombardment of open towns from the sea (I leave out of consideration the better understood topic of privateering)? Secondly, are future wars likely to be conducted without regard to international law?

1. I need hardly say that I do not, as Captain James supposes, contend "that unfortified towns will never be bombarded or ransomed." International law has never

prohibited, though it has attempted to restrict, the bombardment of such towns. Even in 1694 our Government defended the destruction of Dieppe, Havre, and Calais only as a measure of retaliation, and in subsequent naval wars operations of this kind have been more and more carefully limited, till in the Crimean war our cruisers were careful to abstain from doing further damage than was involved in the confiscation or destruction of stores of arms and provisions. The principles involved were carefully considered by the military delegates of all the States of Europe at the Brussels Conference of 1874, and their conclusions, which apply, I conceive, *mutatis mutandis*, to operations conducted by naval forces against places on land, are as follows:—

ARTICLE 15.—Fortified places are alone liable to be besieged. Towns, agglomerations of houses, or villages which are open or undefended cannot be attacked or bombarded.

ARTICLE 16.—But if a town, &c., be defended, the commander of the attacking forces should, before commencing a bombardment, and except in the case of surprise, do all in his power to warn the authorities.

ARTICLE 40.—As private property should be respected, the enemy will demand from parishes or the inhabitants only such payments and services as are connected with the necessities of war generally acknowledged, in proportion to the resources of the country.

ARTICLE 41.—The enemy in levying contributions, whether as equivalents for taxes or for payments which should be made in kind, or as fines, will proceed, as far as possible, according to the rules of the distribution and assessment of the taxes in force in the occupied territory. Contributions can be imposed only on the order and on the responsibility of the general in chief.

ARTICLE 42.—Requisitions shall be made only by the authority of the commandant of the locality occupied.

These conclusions are substantially followed in the chapter on the "Customs of War" contained in the *Manual of Military Law* issued for the use of officers by the British War Office.

The bombardment of an unfortified town would, I con-

ceive, be lawful—(1) as a punishment for disloyal conduct; (2) in extreme cases, as retaliation for disloyal conduct elsewhere; (3) for the purpose of quelling armed resistance (not as a punishment for resistance when quelled); (4) in case of refusal of reasonable supplies requisitioned, or of a reasonable money contribution in lieu of supplies. It would, I conceive, be unlawful—(1) for the purpose of enforcing a fancy contribution or ransom, such as we were told was exacted from Liverpool; (2) by way of wanton injury to private property, such as was supposed to have been caused in the Clyde and at Folkestone, and *a fortiori* such as would have resulted from the anticipated shelling during the night-time of the south coast of the Isle of Wight.

(2) Is it the case that international law is "all nonsense," and that "when we are at war with an enemy he will do "his best to injure us. He will do so in what way he "thinks proper, all treaties and all so-called international "law notwithstanding"? Are we, with Admiral Aube, to speak of "cette monstrueuse association de mots: les "droits de la guerre"? If so, *cadit quaestio*, and a vast amount of labour has been wasted during the last three centuries. I can only say that such a view of the future is not in accordance with the teachings of the past. The body of accepted usage, supplemented by special conventions, which is known as international law, has, as a matter of fact, exercised, even in time of war, a restraining influence on national conduct. This assertion might be illustrated from the discussions which have arisen during recent wars with reference to the Geneva Convention as to the treatment of the wounded and the St. Petersburg declaration against the use of explosive bullets. The binding obligation of these instruments, which would doubtless be classed by your correspondent with the fleet among "old-fashioned treaties, protocols, and other diplo- "matic documents," has never been doubted, while each

party has eagerly endeavoured to disprove alleged infractions of them.

The naval manœuvres have doubtless taught many lessons of practical seamanship. They will have done good service of another sort if they have brought to the attention of responsible statesmen such questions as those with which I have attempted to deal. It is essential that the country should know the precise extent of the risks to which our seaboard towns will be exposed in time of war, and it is desirable that our naval forces should be warned against any course of action in their conduct of mimic warfare which could be cited against us, in case we should ever have to complain of similar action on the part of a real enemy.

Your obedient servant,

T. E. HOLLAND.

OXFORD, *Aug.* 18.

SIR,—In my first letter I called attention to certain operations of the *Spider* and her consorts which seemed to be inspired by no principle beyond that of doing unlimited mischief to the enemy's seaboard. In a second letter I endeavoured to distinguish between the mischief which would and that which would not be regarded as permissible in civilized warfare. The correspondence which has subsequently appeared in your columns has made sufficiently clear the opposition between the view which seems to find favour just now in naval circles and the principles of international law as I have attempted to define them. The question between my critics and myself is, in effect, whether the mediaeval or the modern view as to the treatment of private property is to prevail. According to the former, all such property is liable to be seized or destroyed, in default of a "Brandschatz," or ransom. According to the latter, it is inviolable, subject

only to certain well-defined exceptions, among which reasonable requisitions of supplies would be recognized, while demands of money contributions, as such, would not be recognized.

The evidence in favour of the modern view being what I have stated it to be is, indeed, overwhelming; but I should like to call special attention to the *Manuel de Droit International à l'Usage des Officiers de l'Armée de Terre*, issued by the French Government, as going even further than the Brussels Conference in the restrictions which it imposes upon the levying of requisitions and contributions. The Duke of Wellington, who used to be thought an authority in these matters, wrote in 1844, with reference to a pamphlet in which the Prince de Joinville had advocated depredations on the English coasts:—

> What but the inordinate desire of popularity could have induced a man in his station to write and publish an invitation and provocation to war, to be carried on in a manner such as has been disclaimed by the civilized portions of mankind?

The naval historian, Mr. Younge, in commenting on the burning of Paita, in Chili, as far back as 1871, for non-compliance with a demand for a money contribution (ultimately reduced to a requisition of provisions for the ships), speaks of it as "worthy only of the most lawless "pirate or buccaneer, ... as a singular proof of how com- "pletely the principles of civilized warfare were conceived "to be confined to Europe."

Such exceptional acts as the burning of Paita, or the bombardment of Valparaiso, mentioned by Mr. Herries, will, of course, occur from time to time. My position is that they are so far stigmatized as barbarous by public opinion that their perpetration in civilized warfare may be regarded as improbable; in other words, that they are forbidden by international law.

It is a further question whether the rules of international law on this point are to be changed or disregarded in

future. Do we expect and are we desirous that future wars shall be conducted in accordance with buccaneering precedent, or with what has hitherto been the general practice of the nineteenth century? Your naval correspondents incline to revert to buccaneering, and thus to the introduction into naval coast operations of a rigour long unknown to the operations of military forces on land; but they do so with a difference. Lord Charles Beresford (writing early in the controversy) asserts the permissibility of ransoming and destroying, without any qualifying expressions; while Admiral de Horsey would apparently only ask "rich" towns for contributions, insisting also that a contribution must be "reasonable," and expressly repudiating any claim to do "wanton injury to pro-"perty of poor communities, and still less to individuals." In the light of these concessions, I venture to claim Admiral de Horsey's concurrence in my condemnation of most of the doings mentioned in my first letter, although on the whole he ranges himself on the side of the advocates of what I maintain to be a change in the existing law of war. Whether or no the existing law needs revision is a question for politicians and for military and naval experts. It is within my province only to express a hope that the contradiction between existing law and new military necessities (if, indeed, such contradiction exists) will not be solved by a repudiation of all law as "nonsense"; and, further, that if a change of law is to be effected, it will be done with due deliberation and under a sense of responsibility. It should be remembered that operations conducted with the apparent approval of the highest naval authorities, and letters in the *Times* from distinguished admirals, are in truth the stuff that public opinion, and in particular that department of public opinion known as "international law," is made of.

The ignorance, by the by, which certain of my critics have displayed of the nature and claims of international

law is not a little surprising. Some seem to identify it with treaties; others with "Vattel." Several, having become aware that it is not law of the kind which is enforced by a policeman or a County Court bailiff, have hastened, much exhilarated, to give the world the benefit of their discovery. Most of them are under the impression that it has been concocted by "bookworms," "jurists," "professors," or other "theorists," instead of, as is the fact, mainly by statesmen, diplomatists, prize courts, generals, and admirals. This is, however, a wide field, into which I must not stray. I have even avoided the pleasant by-paths of disquisition on contraband, privateering, and the Declaration of Paris generally, into which some of your correspondents have courteously invited me. I fear we are as yet far from having disposed of the comparatively simple question as to the operations which may be properly undertaken by a naval squadron against an undefended seaboard.

I am, your obedient servant,

T. E. HOLLAND.

LLANFAIRFECHAN, NORTH WALES, *Aug.* 27.

The first of the above letters, as may be inferred from the second and third, gave rise to a controversy, carried on, during August, 1888, in the columns of the *Times*, in which views opposed to those of the writer were maintained by a number of high authorities upon matters naval and military. Most of these distinguished persons were pleased to speak of international law with but scant respect, and nearly all agreed in "a universal feeling of "distrust in the magnanimity of our enemies."

The Report, presented to Parliament by the Committee of Admirals appointed to consider, among other questions raised by the manœuvres, "the feasibility and expediency "of cruizers making raids on an enemy's coasts, and un-

"protected towns, for the purpose of levying contribu-
"tions," was to the effect that "there can be no doubt
"about the feasibility of such operations by a maritime
"enemy possessed of sufficient power; and as to the expe-
"diency, there can be as little doubt but that any Power
"at war with Great Britain will adopt every possible
"means of weakening her enemy; and we know of no
"means more efficacious for making an enemy feel the
"pinch of war than by thus destroying his property and
"touching his pocket[1]."

2. A Bombardment of the Hague.

The controversy of 1888 had reference to the lawfulness of the bombardment by a naval force of undefended coast towns, with a view to (1) wanton devastation; (2) ransoms; (3) requisitions and contributions; (4) destruction of shipping, &c., though endangering the town; (5) retaliation. In 1890 a new question was raised with special reference to the Hague, an unfortified town of a hundred thousand inhabitants, admittedly within range of the guns of ships lying off Scheveningen. The Chevalier Tindal, formerly an officer of artillery, maintained, while the Netherlands Minister for War denied, that the bombardment of the town would be a legitimate operation of warfare. The facts upon which the Chevalier relied in support of his opinion will sufficiently appear from the following reply to a letter which he had addressed to me upon the subject.

[1] *Parl. Paper*, 1889 [C.—5632], pp. 4, 8. The hostile squadron had, it seems, received express instructions "to attack any of the Ports of "Great Britain," p. 39. Some extraordinary proceedings are disclosed in this Report, e.g. "firing on and destroying the principal "public buildings near the quay" at Greenock, p. 9; "fire opened "on Newcastle, at 8¼ miles," p. 11; "steamers under weigh and a "fishing-fleet destroyed. The crews were not removed," ib.

OXFORD, *April* 7, 1890.

DEAR SIR,

The question which you have raised is a new one, and therefore one to which International Law has no ready-made answer. Any conjecture which we may make as to the rule which International Law (i. e. the public opinion of the Western Nations) would apply to the case, can only be by way of deduction from, or analogy to, rules already accepted.

The Hague is an open town, containing a large inoffensive population, fine public buildings, and Art collections. Though within cannon-range, it is out of sight of a squadron at sea.

So far, I think it would be exempted from naval bombardment, unless possibly on refusal to supply requisitions indispensably necessary for the fleet, or by way of retaliation for some gross infringement of the Law of Nations by the Dutch.

But, it is argued, the Hague is also the seat of Government, the centre of mobilization, a great garrison town, and possesses the only foundry of cannon in the kingdom.

I cannot say that these facts so far alter the case as to justify, on the analogy of the accepted usages of warfare, a necessarily undiscriminating bombardment, even preceded by such notice as would enable the population to provide for their personal safety by a hurried flight.

It appears to me that, except on the grounds already indicated, the duty of the enemy would be, since *ex hypothesi* he cannot so direct his fire as to affect only the objectionable quarters of the town, to land a sufficient force to destroy the foundry and disperse the mobilizing troops. It may be quite true that to lay the Hague in ashes from a distance might, in the long run, save human suffering, but this argument appears to me to be a dangerous one, capable of covering almost any atrocity, such as

the assassination of an all-important General, or Minister, or the hanging of notables.

But while I think that the logical development of existing rules would lead to the conclusion which I have stated, I must observe:—(1) That I do not consider it at all certain that the development would in fact be thus logical. It is difficult beforehand to say in accordance with which of two competing analogies a new rule will be framed; and I cannot forget that one of our squadrons, during the naval manœuvres of 1889, bombarded Newcastle, with a view to the destruction of the shipping and Armstrong gun-factory, from a distance of eight miles, apparently without censure from the Admiralty; (2) That even should the rule be what I think it ought to be, it is not likely to be supported for some time to come, at all events, by so strong a sentiment as to be safely relied upon.

I might add (3) that no rule of International Law is so certain to stand the strain of a life-and-death struggle that one would be willing to make the existence of a nation depend upon its being duly observed.

Though disposed to differ from you as to the legal theory, I am therefore entirely at one with you as to the practical expediency of removing your war-office and foundry to a greater distance from the accessible coast. Should you think fit to publish my opinion, I have only to request that you will kindly print textually the whole of this letter.

I am,

Yours faithfully,

T. E. HOLLAND.

3. L'INSTITUT DE DROIT INTERNATIONAL.

The subject having been brought before the "Institut "de Droit International,"[1] at its Cambridge meeting in

[1] Supra, p. 88.

1895, by the present writer, the "Institut" appointed a Committee, of which the writer was "rapporteur," with the assistance of General Den Beer Poortugael as "co-"rapporteur," to consider the question: "Le bombarde-"ment des villes ouvertes par des forces navales est-il "légitime?"[1].

The report of the Committee, drafted by the present writer and approved by General Den Beer Poortugael, was presented to the "Institut" at its Venice meeting in 1896. After setting out the terms of a "questionnaire," which had been circulated by the General among the members of the Committee, and analyzing the replies which had been received to it, the report proceeded as follows:—

Nous n'avons pas l'intention de rouvrir la discussion sur les bombardements en général, dont les règles quant à la guerre par terre ont été posées par le *Manuel* d'Oxford, art. 32 (cfr. le projet de Bruxelles, art. 15). Ainsi, il ne nous semble pas nécessaire de discuter, par exemple, les vues de M. Lueder (Holzendorff's *Handbuch*, IV, p. 451). La pratique moderne se déduit naturellement des principes énoncés dans la Déclaration de Saint-Pétersbourg: "que "le seul but légitime que les États doivent se proposer "durant la guerre est l'affaiblissement des forces militaires "de l'ennemi." Nous nous bornons aux bombardements navals des villes ouvertes, dont presque le seul exemple actuel de date récente est celui de Valparaiso, en 1866, par la flotte espagnole. Le bombardement de Dieppe et du Havre par la flotte anglaise a dû être justifié, même en 1694, comme acte de représailles pour des actes du grand roi, et, par conséquent, a été commémoré par une médaille représentant le taureau de Phalaris, avec l'inscription *Suis perit ignibus auctor*. Le bombardement de Grey-Town,

[1] *Annuaire*, t. xiv. p. 295.

en 1853, par un croiseur des États-Unis peut être expliqué par des raisons spéciales.

Quant à la théorie de la question, les débats ont été à peine ouverts.

Lorsque le prince de Joinville recommanda en 1844, en cas de guerre, la dévastation des grandes villes commerciales anglaises, le duc de Wellington a écrit: "What but "the inordinate desire of popularity could have induced "a man in his station to write and publish such a produc- "tion, an invitation and provocation to war, to be carried "on in a manner such as has been disclaimed by the "civilized portions of mankind?" (Raikes, *Correspondence*, p. 367.)

La thèse du Prince de Joinville a été reprise par M. l'amiral Aube, dans un article qui a paru dans la *Revue des Deux Mondes* en 1882. Après avoir fait remarquer que l'objectif supérieur de la guerre est de faire le plus de mal possible à l'ennemi, et que "la richesse est le nerf "de la guerre," il continue ainsi: "Tout ce qui frappe "l'ennemi dans sa richesse devient non seulement légitime, "mais s'impose comme obligatoire. Il faut donc s'attendre "à voir les flottes cuirassées, maîtresses de la mer, tourner "leur puissance d'attaque et de destruction, à défaut d'ad- "versaires se dérobant à leurs coups, contre toutes les "villes du littoral, fortifiées ou non, pacifiques ou guer- "rières, les incendier, les ruiner, et tout au moins les "rançonner sans merci. Cela s'est fait autrefois; cela ne "se fait plus; cela se fera encore: Strasbourg et Péronne "en sont garants" (*Revue des Deux Mondes*, t. 50, p. 331). Cfr. M. E. Lamy et M. Gabriel Charmes, dans la même *Revue*, t. 53, p. 345, t. 55, p. 149. M. l'amiral Bourgois a combattu ces idées dans la *Nouvelle Revue*, 1886, t. 39, p. 494. Cfr. même *Revue*, t. 40, p. 474; t. 49, p. 489; t. 50, p. 453.

La discussion s'est rouverte encore une fois en 1888, à propos des manœuvres exécutées par la flotte britannique,

dont la division soi-disant ennemie a feint de rançonner à grand prix, sous menace de bombardement, de grandes villes commerciales, comme Liverpool, et en même temps de causer des pertes inutiles à des villes de plaisir et de bains de mer, comme Folkestone, en y lançant des obus. Un de vos rapporteurs a fait observer, dans une série de lettres adressées au *Times*, que de tels actes sont contraires aux règles du droit des gens, ainsi qu'à la pratique du siècle actuel. Il a maintenu que le bombardement d'une ville ouverte ne saurait être permis que dans le but d'exiger des réquisitions en nature, nécessaires pour la flotte ennemie, et des contributions en argent au lieu de réquisitions; ou par voie de représailles pour des violations du droit de la guerre; ou si la ville se défend contre l'entrée par terre des troupes ennemies (cfr. le *Manuel de l'Institut*, art. 55, 57). L'avis contraire a été soutenu par la plupart des amiraux et d'autres officiers de la marine anglaise qui ont pris part à la correspondance très bien nourrie qui s'est développée dans le *Times*, et d'autres journaux, pendant les mois d'août et de septembre 1888. Depuis cette année, le sujet n'a pas été sérieusement discuté. Voir néanmoins un article intitulé: *National defence: some neglected conditions*, dans le *United Service Magazine*, avril 1896.

Nous avons l'honneur de proposer à l'Institut les conclusions suivantes:

Conclusions.

1. Il n'y a pas de différence entre les règles du droit de la guerre quant au bombardement par les forces militaires de terre et celui par les forces navales.

2. En conséquence, s'appliquent à ce dernier les principes généraux énoncés dans l'art. 32 du *Manuel de l'Institut;* c'est-à-dire, qu'il est interdit: (*a*) de détruire des propriétés publiques ou privées, si cette destruction n'est pas commandée par une impérieuse nécessité de

guerre; (*b*) d'attaquer et de bombarder des localités qui ne sont pas défendues.

3. Les règles énoncées dans les art. 33, 34 du *Manuel* sont également applicables aux bombardements navals.

4. En vertu des principes généraux susrappelés, le bombardement par une force navale d'une ville ouverte, c'est-à-dire, qui n'est pas défendue par des *murs d'enceinte* [fortifications ou d'autres moyens d'attaque ou de résistance pour la défense immédiate], ou par des forts détachés situés à sa proximité, par exemple à la distance maxima de 4 à 10 kil., est inadmissible, excepté dans les cas suivants:—

1°. Aux fins d'obtenir par voie de réquisitions ou de contributions ce qui est nécessaire pour la flotte.

Toutefois ces réquisitions ou contributions doivent rester dans les bornes prescrites aux art. 56 et 58 du *Manuel de l'Institut.*

2°. Aux fins de détruire des chantiers, [des établissements militaires,] des dépôts de munitions de guerre ou des vaisseaux de guerre se trouvant dans un port.

3°. *Aux fins de punir, par voie de représailles, des infractions aux lois de la guerre de la part de l'ennemi.*

Sont interdits spécialement les bombardements dont l'objet est seulement d'exiger une rançon (Brandschatz) et, à plus forte raison, ceux qui sont destinés seulement à amener la soumission du pays par la destruction, non autrement motivée, des habitants paisibles ou de leurs propriétés.

5. Une ville ouverte ne peut pas être exposée à un bombardement par le seul fait:—

1°. Qu'elle est la capitale d'un État, ou le siège du gouvernement (mais, naturellement, ces circonstances ne la garantissent nullement contre un bombardement).

2°. Qu'elle est actuellement occupée par des troupes, ou qu'elle est ordinairement la garnison de troupes de

diverses armes, destinées à rejoindre l'armée en temps de guerre.

6. *Des fortifications peuvent toujours être attaquées même si cela peut causer des dégâts à la ville voisine.*

7. [En outre] Une ville ouverte qui se défend contre l'entrée de troupes ou de marins débarqués peut être bombardée [aux fins de protéger le débarquement des soldats et des marins, si la ville ouverte tente de l'empêcher, et] comme mesure auxiliaire de guerre, pour faciliter l'assaut donné par les troupes ou marins [débarqués, si la ville se défend].

T. E. HOLLAND.

DEN BEER POORTUGAEL [1].

The "conclusions" were unanimously adopted by the "Institut," after full debate, subject to certain amendments, which, so far as they consisted in omissions, have been indicated by italicizing the portions affected of the original draft; so far as they consisted in substitutions or insertions, by printing the substituted or inserted words in brackets. The matter of Art. 7, as amended, was transferred to Art. 4, where it now forms a separate paragraph, immediately preceding the paragraph beginning "Sont "interdits spécialement [2]."

[1] *Annuaire*, t. xv, pp. 145, 148.

[2] Ib. p. 309.

VI

INTERNATIONAL LAW IN THE WAR BETWEEN JAPAN AND CHINA[1]

THE great war in the extreme East has lasted not quite ten months[2]. It has destroyed the reputation of one Empire, and made that of another. In endless ways it has been full of instruction, but I propose to deal with it only in so far as it has illustrated the rules of International Law. To the student of this science an outbreak of hostilities is always interesting. He knows that in war-time the questions with which he is concerned come thicker and faster than in time of peace, and that he can turn for their solution, either directly or by analogy, not merely to the often ill-defined practice of nations, or the frequently uncertain results of diplomatic discussions,

[1] A Lecture delivered in 1895. *Fortnightly Review*, June, 1895. Translated into Japanese by order of the Government, for distribution among officers. See also Nagao Arriga, *La guerre Sino-Japonaise, au point de vue du droit international*, Paris, 1896.

[2] It ended on May 8, when the ratifications of the Treaty signed at Shimonoseki on April 17 were exchanged at Chefoo. During the armistice, the war, of course, continued to subsist: "Neque pax sunt "induciae; bellum enim manet, pugna cessat."

but, in many cases, to clear and authoritative decisions of Courts of Prize.

The law of war, as is well known, consists of two great chapters, dealing respectively with the relations of one belligerent to the other, and with the relations of each belligerent to neutrals.

The former topic has been under discussion for at least six centuries; for, not to mention classical antiquity, the literature of it may be traced from the canonists and casuists, through the dreamers of a law of Nature, down to the positive systems of the present day. The latter topic is comparatively modern, dating, as a clearly defined subject of separate inquiry, only from the eighteenth century; though it has already come far to surpass in complexity and importance the law of Belligerency.

I propose to call attention to some points in which each of these departments of International Law has been illustrated by the war which has just been brought to a close. But, first of all, a word or two upon the applicability of International law to the nations which have been engaged in this combat; a question upon which some very random observations have appeared in the public press[1]. Are China and Japan, with reference either to one another or to other Powers, subject to the duties which are recognized as subsisting between the States of Europe? We come here upon a large question, no less than the essential character of International Law, and the sphere of its operation. According to the older theory, no doubt, the law of Nations was the law of Christendom; as little applicable to infidels as was the "common law" of the Greek cities (τὰ κοινὰ τῶν Ἑλλήνων νόμιμα) to societies of barbarians.

[1] E.g. in the *Saturday Review*, August 11, 1894: "There was no "legal war. . . . The Code of International law does not apply to "barbarians, who have nothing of civilization beyond a chatter of "words and a supply of deadly weapons." Cf. even the *Law Journal*, 1894, pp. 478, 513, 536.

The Reformation, by breaking up the religious unity of Europe, obliged the jurists of those days to look less and less to religion as the test of subjection to what was later described as the "public law of Europe," and of membership of the "Family of Nations." It came to be understood that the members of this "Family" are the States of Western Europe and their derivatives in North and South America, as sharers not so much in a common religion as in a common civilization and stock of moral ideas. That any other States possess these qualifications is not to be presumed, but needs to be established from the special circumstances of each case. The accession of the Oriental races to the law or "concert" of Europe may be taken to have begun by the formal admission into it of the Ottoman Empire by the Treaty of Paris of 1856. Since that date, the maintenance of permanent diplomatic intercourse between the European Courts and several Powers of the remoter East, together with the increasingly large number of Treaties made with such Powers, and well observed by them, have accustomed us to regard these new-comers as belonging to the charmed circle, though, perhaps, as admitted to it only on probation. Such might seem to be the position of Japan; but such could hardly be said to be the position of China; for China is far behind Japan in readiness to assimilate the ethical ideas of the West, or to enter into the network of treaties which so much facilitates the social life of the world[1]. In particular, she has neglected to accede to the Geneva Convention for the treatment of the wounded, to which Japan long ago became a party; nor have her courts and codes any pretension so to satisfy European requirements as to justify the Western Powers in resigning, as they are about to do in the case of Japan[2], the

[1] E.g. the "universal conventions" as to weights and measures, posts, and telegraphs.

[2] Great Britain, by Treaty with Japan of July 16, 1894, provides for

extra-territorial privileges enjoyed in the Empire by foreigners. Antecedently to the war, therefore, we should have said that Japan was admitted on probation, while China was only a candidate for admission, to the "Family of Nations." Let us now see what further light has been thrown upon the respective qualifications of the two Empires by subsequent events; and first with reference to the law of BELLIGERENCY, wherein we have to consider: I.—The declaration of war. II.—The conduct of warfare. III.—The *commercia belli*, i.e. such quasi-friendly transactions as occur between enemies.

I.—War was formally declared by Japan on August 1, 1894, and the challenge was accepted in a counter-declaration issued by China on the following day. But hostilities were already in progress. On July 25, a Japanese squadron had been engaged with Chinese men-of-war which had been convoying transports carrying reinforcements for Asan, in Korea; and Japanese troops had captured Asan itself on the 29th. A state of war existed therefore between the two countries as early as July 25; and there is nothing irregular in a war thus commenced. It has long been a settled doctrine of International Law that a declaration, though laudable and for several purposes convenient, is not an essential preliminary to legitimate warfare, and that, even when issued, it may be followed by acts of hostility without an interval[1]. For proof that practice has been in accordance with theory, it will be enough to refer to the historical sketch of the subject which was prepared for the War Office by Colonel Maurice, when the possibility of this country being in-

the cessation of such privileges after five years from that date. The United States, Russia, Germany, Sweden, Italy, France, and Austria have already followed suit.

[1] See Lord Ellenborough in *Orme* v. *Bruce*, 12 East, 226; Lord Stowell in the *Nayade*, 4 Rob. 253, and the *Eliza Anne*, 1 Dods. 247; Betts, J., in the *Hiawatha*, 1 Blatch. 19.

vaded without notice by means of a Channel Tunnel was under discussion.

II.—With reference to the conduct of warfare, China has not accepted the customs, nor has she bound herself by the express conventions, which prevail among civilized nations. The signal made by Admiral Ting, before the battle off the Yalu, "If the enemy shows the white flag, "or hoists the Chinese ensign, give no quarter, but con- "tinue firing at her till she is sunk[1]," need, therefore, occasion no surprise. Sung, the Imperial Commissioner, is stated to have posted notices in Northern Manchuria, offering 10,000 taels for the decapitation of three Japanese generals[2]; and it seems to be established that the Chinese commanders habitually offered and paid rewards for the heads and hands of prisoners[3], who might indeed be accounted fortunate if they escaped a fate far worse than instantly inflicted death. It was the torture and mutilation of those Japanese who happened to be made prisoners during the operations against Port Arthur which stung their fellow-countrymen into madness, and explains, though nothing can excuse, the massacres which were carried on by them for four days after the place was taken.

With the lamentable exception just mentioned, the conduct of the operations of war by the Japanese seems to have been in accordance with the best European practice, and with the Proclamation addressed to the army on April 22, 1894, by Count Oyama, the Minister for War. This remarkable document lays down that "belligerent operations being properly confined to the "military and naval forces actually engaged, and there

[1] Statement by Captain McGiffen of the *Chen-Yuen*.

[2] Correspondent of the *Daily Telegraph*, April 12, 1895.

[3] Claims on this account are said to have been found among the papers of a Chinese general, and Mr. Hart, correspondent of the *New York World*, saw payments made for heads in the governor's yamen at Port Arthur.

"being no reason whatever for enmity between indivi-"duals, because their countries are at war, the common "principles of humanity dictate that succour and rescue "should be extended even to those of the enemy's forces "who are disabled either by wounds or disease." It goes on to state that Japan became a party to the Geneva Convention ("more commonly called the Red Cross Association") in June, 1886, and that "her soldiers "had already been instructed that they are bound to treat "with kindness and helpfulness such of their enemies as "may be disabled by wounds or disease." China, not having joined the Convention, may behave badly, "but "nevertheless her disabled must be succoured, and her "captured kindly and considerately treated[1]."

It may be worth while to mention *seriatim* the points in which the Japanese conduct of warfare may be tested by the rules of International Law.

1. There seems to have been no employment of privateers. As against China, a non-signatory of the Declaration of Paris, this would have been lawful for Japan, though herself a signatory since 1886[2].

2. There has been no complaint of any violation of the St. Petersburg Declaration on the part of the Japanese. The Chinese are, however, accused of firing explosive bullets.

3. The Japanese Government seems to have taken some precautions against the employment of savage auxiliaries, by prohibiting the enlistment of those two-handed swordmen the "Samuri." Some of these people, however, accompanied the troops in the guise of coolies, and have been guilty of a certain amount of wanton cruelty[3].

[1] H. Norman, *The Far East*, p. 378.

[2] See the official collection of *Japanese Treaties*, vol ii. (Tokio, 1889), p. 399.

[3] See an article in the *North American Review* for March, 1895, by P. Villiers, special correspondent of the *Standard*.

4. The bombardment of Tung-chow by a Japanese squadron, as a feint, in January, 1895, was complained of by the missionaries, on the ground that it is an open town. But there seems to be no doubt that it is defended by forts, which replied to the enemy's fire [1].

5. The treatment of peaceful inhabitants and foreigners in places occupied by the Japanese seems to have been praiseworthy. Thus, when Kinchow was taken, an officer was stationed in every store to protect the proprietor from soldiers and coolies, and the Japanese governor of the town fed hundreds of Chinese daily [2]. A special guard was posted over a British missionary found in one of the houses during the street fighting at old Nieu Chang [3]; and after the taking of Ying Kow, on March 6, 1895, protection was assured to all law-abiding citizens, and six hundred soldiers were detailed to safeguard the foreign residents.

6. Quarter seems, as a rule, to have been freely granted to non-resisting combatants. It is not established that the *Naniwa* continued to fire, as was alleged, upon the sinking *Kowshing*, and upon the troops and sailors who had taken to the boats or had leapt into the water to avoid sharing her fate. At Port Arthur, for once, there is no doubt that the behaviour of the Japanese was detestable. Much may be pardoned of what occurred when the stronghold was first entered by its assailants. If a certain number of non-uniformed coolies, or of soldiers who had thrown off their uniforms, received short shrift, when found with rifles in their hands, what was done was not without the sanction of recent European precedent. But unfortunately the Japanese, officers and men alike, were carried far beyond what could be excused even by their finding the mutilated remains of their tor-

[1] *Times*, March 19, 1895.
[2] *New York Herald*, December, 1894.
[3] *Times*, March 6, 1895.

tured friends exposed on the gateway of the town. For four days, after the first, the massacre of non-combatants, of women, of children, was continued in cold blood, while European military *attachés* and special correspondents sickened at the wholesale murders and mutilations, which they could do nothing to prevent[1]. It is said that at last but thirty-six Chinamen were left alive in the city. They had been spared only to be employed in burying their dead fellow-countrymen, and each was protected by a slip of paper fastened in his cap, with the inscription: "This "man is not to be killed[2]."

In pleasing contrast to all this, is what occurred upon the capture of the sister naval arsenal to Port Arthur, Wei-hai-wei. The Chinese troops found in the fortress were dismissed in safety, as were the foreigners who had been assisting in the defence of the place, with the exception only of an American who had been arrested under suspicious circumstances at Kobe, but had been released on giving his parole to return forthwith to the United States. So, after the capture of Makong in the Pescadores, the Chinese officers were sent to Japan as prisoners of war, but the rank and file were despatched in junks to the mainland, there to be set at liberty.

7. In 1886, Japan gave in her adhesion to the Geneva Convention for the treatment of the wounded[3], and in the same year a society which had been founded in 1877, on the occasion of the Satsuma rebellion, for the better relief of the sick and wounded, enemies as well as friends, was reorganized under the patronage of the Mikado, and formally enrolled in the list of Red Cross Societies, whose headquarters is at Geneva. Many ladies of high rank have qualified in it as nurses, it has thousands of subscribers, and it possesses fine hospitals at Hiroshima,

[1] *Times*, special correspondent, January 8, 1895.
[2] *North American Review*, March, 1895, p. 325.
[3] *Treaties*, vol. ii. p. 393.

Osaka, and Tokio, where such of the Chinese wounded as could be moved so far received every kindness and the best medical attendance[1].

The Japanese had no opportunity of conforming to the prescriptions of the Geneva Convention which relate to the surgeons and field hospitals of the enemy, since no such functionaries or institutions seem to be known to the Chinese army.

III.—The most rudimentary, and therefore the longest and most generally accepted, principles of International law, are those which teach the sanctity of ambassadors, the respect due to a flag of truce, and the good faith which is required in the performance of such agreements as may be entered into between enemies. "Etiam hosti fides servanda."

Little fault is to be found with either belligerent with reference to these principles, except that the Chinese are said to have fired on a flag of truce sent to inform them of the conclusion of the armistice. When, at the outbreak of the war, the departing Japanese minister was insulted by offensive cries and pelted with mud, by a disorderly mob of soldiers, while embarking with his suite at Taku, the Chinese authorities lost no time in expressing their regret, and in punishing the offenders.

The Japanese Government, though it refused, and very properly, to treat with Mr. Detring, and subsequently with two Chinese envoys, as being imperfectly accredited, received the plenipotentiary, Li Hung Chang, with every mark of friendly deference, and at once opened negotiations with him, at the little town of Shimonoseki, which had been selected for the purpose on account of its peaceful character. Greater precautions should, as the event proved, have been taken for his safety, but when, on March 25, an attempt was made on the life of Li Hung

[1] See a special article in the *Times* of January 8, 1895.

Chang, by a fanatic or lunatic who fired at him in the street, the would-be assassin was promptly tried, and sentenced to penal servitude for life; the police officials who had failed to make the outrage impossible were dismissed; and the Mikado, not content with tendering the fullest apology to Li Hung Chang, and sending his own medical attendants to see to the wound, proceeded to grant to China, what had previously been refused, except on prohibitively severe terms, an unconditional armistice, extending over the greater part of the scene of military operations.

The armistice was scrupulously observed, and the peace negotiations, down to the signature of the Treaty of Peace on April 17, and its ratification on May 8, 1895, proceeded as correctly on both sides as could have been the case in Europe.

The questions raised by the relations of belligerents one to another are less complex and delicate than those which arise between belligerents and NEUTRALS. Great Britain announced her neutrality in the late war by a proclamation issued on August 7, 1894, and her example was promptly followed by the other maritime Powers of the West. The presumption is, of course, in favour of neutrals being entitled to carry on their trade, or otherwise pursue their ordinary avocations, as if the war, to which they are no parties, were not being waged. This attitude of aloofness has, however, become subject to numerous modifications, most of which are indeed inevitable. The ordinary rights of States need, in many cases, to be specially re-defined when those States, by the outbreak of war between their neighbours, come to occupy the position of neutrals; and States which are so placed become *ipso facto* subject to a set of duties which have no existence in time of peace.

A few words upon such of the rights of neutrals as

made themselves felt during the late war. The sovereignty of the neutral over its own territory including its territorial waters, implies the right to prohibit hostilities taking place there. No attempt was made to infringe British rights over Hong Kong, or to commit acts of war within its waters. An engagement seems even to have been given by the Japanese that they would not attack, and by the Chinese that they would not by torpedoes obstruct the access to, a port in which all foreigners are so interested as Shanghai. The persons and property of neutrals in China were respected alike by the Chinese and by the invaders. It is true that a few days after the outbreak of the war, a British vessel, the *Chung King*, while lying at Tong Ku, was boarded by a number of Chinese soldiers, who seriously maltreated sixty Japanese, men, women, and children, who happened to be on the ship; but an ample apology for the occurrence was made by the Viceroy to the British Consul[1]. The arrest, on a French mail steamer in Japanese waters at Kobe, of two American citizens, whose papers showed that they were proceeding to China to assist the Government there with certain military inventions, though a novel proceeding, was probably justifiable. The neutral right to continue diplomatic intercourse with both belligerents was not interfered with on either side during the war.

But the duties of neutrals are far more prominent than their rights. In the first place, a State by becoming neutral, is precluded from certain courses of action which would ordinarily be open to it. Secondly, a neutral State is obliged to prevent certain classes of acts with which, but for the war, it would have nothing to do. Thirdly, a neutral State is obliged to acquiesce in penalties being inflicted by the belligerents upon its subjects, for acts which, apart from the war, would be perfectly innocent.

[1] *London and China Telegraph*, 1894, p. 650.

Let us see how far these several heads of duty have been illustrated by what has lately occurred.

I.—(1) A neutral State is, *ex vi termini*, precluded from allowing its armed forces to take part, in any way, in the hostilities. A salute fired by Admiral Fremantle in honour of a Japanese man-of-war is alleged to have given notice to the Chinese of what was intended to have been the secret approach of a Japanese squadron to the harbour of Wei-hai-wei. This was unfortunate, and caused much irritation in Japan till the accidental character of the occurrence became thoroughly understood. (2) A neutral State, though it may not furnish troops to either belligerent, is not compromised by assistance rendered by individuals, not belonging to its own army or navy, to one or the other combatant. A good many Europeans seem to have been serving China during the late war, but Germany was not responsible for Major von Hanneken, nor we for Admiral Maclure[1]. (3) A neutral State is bound to abstain from selling its ships of war to either belligerent. If, therefore, as was alleged, the Chilian cruiser, *Esmeralda*, had been sold to Japan, or if, as was also alleged, half of the Chilian fleet had been sold to China, gross violations of neutral duty would have occurred.

II.—A neutral State is bound to prevent certain acts by persons, or within territory, subject to its control. It is, for instance, bound to prevent its territory from being used as a base of hostile operations. So the British proclamation of neutrality brought into force the two "twenty-four hours" rules in all ports of the Queen's dominions. Under these, no Chinese or Japanese warship could, under ordinary circumstances, remain in such ports for a longer time than that mentioned, nor could she

[1] Lieutenant Bourchier, R.N., who had been lent to the Chinese Government, left its service, under instructions from Admiral Fremantle.

leave such a port within a shorter time after the departure from it of a warship or merchant vessel belonging to the other belligerent. Again, although a neutral government is not bound to prevent the export by its subjects of munitions of war, to be used by the belligerents, it is bound, according to modern views, to prevent the export of ships of war to be thus used. As to the limits of this duty, so much discussed with reference to the *Alabama*, there is still much doubt; but, in order to be on the safe side, neutral governments are in the habit of taking, by means of "Foreign Enlistment Acts" or similar pieces of legislation, powers considerably in excess of their International obligations, against a trade which so closely approximates to the sending forth from their shores of a hostile expedition against a friendly Power. An armed vessel, the *Tatsuta*, built in the Tyne for Japan, got clear away before the war was declared; but during the war so close a watch was kept by our customs authorities upon all building yards, that no accession to the naval strength of either China or Japan was possible from that quarter. So, for instance, when a vessel called the *Diogenes*, built at Blackwall, and evidently fitted for war service, was about to proceed to the mouth of the Thames for her speed trial, the Foreign Office, which had been kept informed of the progress of the ship, communicated with the Admiralty, which sent a detachment of thirty blue-jackets and marines to go on board of her and see that she did not leave British waters.

III.—The duty of a neutral power to acquiesce in belligerent interference with the trade of its subjects relates to three main topics, viz. blockade, contraband, and belligerent service. The neutral power is under no obligation to prevent its subjects from engaging in the running of blockades, in shipping or carrying contraband, or in carrying troops or despatches for one of the belli-

gerents; but, on the other hand, neutral subjects, so engaged, can expect no protection from their own Government against such customary penalties as may be imposed upon their conduct by the belligerent who is aggrieved by it. With a view to the infliction of such penalties, a belligerent is armed with the right of "visit and search," i. e. his cruisers may stop and overhaul any merchant vessel reasonably suspected of any of the offences in question, may arrest her, and may bring her in with a view to obtaining her condemnation by a Prize Court.

No blockade seems to have been established during the late war, but the question of contraband from time to time became prominent. There are many objects, such as rifles and gunpowder, as to the contraband character of which there can be no doubt; but it is not unusual for a belligerent to announce, in a proclamation issued at the outbreak of the war, what other objects he intends to include in the prohibited list. Japan seems to have made such a proclamation with reference to lead and coal, but to have promised not to interfere with the carriage of rice. No similar announcement was made by China, although, early in September, a British ship bound for Japan, on touching at Shanghai, was not allowed to proceed on her voyage till she had discharged a quantity of chlorate of potash which was part of her cargo[1]. On the 21st of the same month a Chinese cruiser stopped the British steamer *Pathan*, in Formosa channel, on suspicion of carrying munitions of war, and took her into Keelung, for further examination[2]. Subsequent searches for contraband were, of course, more usually made by the cruisers of Japan. In March, 1895, several steamers, under the British and the German flags, were stopped and searched by Japanese fast cruisers in the Gulf of Pe-chi-li. These proceedings were, in some

[1] *Times*, September 13, 1894.

[2] Reuter's telegram, Shanghai, September 26, 1894.

quarters, described as "high-handed," but were perfectly legitimate. On April 10 the British steamer *Yiksang*, with 220,000 cartridges on board, shipped at Shanghai, as was alleged, in good faith as bamboos and steel, was seized at Taku and carried to Japan, where she was speedily brought before a Prize Court, sitting at Sasebo, which ultimately released her. It must be noticed that, quite early in the war, a system of Prize Courts, of first instance and of appeal, was duly called into existence in Japan, and a body of rules of procedure, worthy of the best days of Doctors' Commons, was promulgated for their guidance[1]. The cases seem not to have been numerous, and can have hardly afforded an opportunity for the appearance of a Japanese Lord Stowell.

The remaining ground for the arrest of a neutral vessel by a belligerent, that she is engaged in the service of the enemy, by carrying troops, officers, or despatches, was illustrated by a case which occurred at the very beginning of the war. On July 25, 1894, the relations between China and Japan with reference to Korea, being very strained, and several transports convoyed by men-of-war having already landed reinforcements for the Chinese forces at Asan, in that country, a Japanese squadron, cruising off the island of Sho-pai-oul, on the Korean coast, was attacked about 7 a.m. by Chinese war-ships returning from Asan. About 9 a.m. the *Kowshing*, a British vessel, carrying further Chinese reinforcements for Asan, appeared on the scene, whereupon the *Naniwa*, one of the Japanese cruisers, turned back from pursuing the Chinese men-of-war and signalled to her to stop. A boat from the *Naniwa* then boarded the *Kowshing*, and finding that she was carrying 1,200 Chinese troops, with several generals, including the German Major von Hanneken, inquired of the captain whether he would peaceably follow the *Naniwa* to Japan. The

[1] Set out in the *Japan Weekly Mail*, August 25, 1894.

captain said, "Yes. I am powerless to refuse, as you "are a man-of-war." The Chinese officers, however, declined to allow this to be done, and made preparations for shooting Captain Glasworthy and his English officers should any attempt be made to take the ship to Japan. After some more parleying, and a final signal from the Japanese to "quit the ship immediately," the *Naniwa* between 12 and 1 p.m. fired a torpedo and then a broadside at the *Kowshing*, exploding her boilers, and eventually sending her to the bottom. All on board who were able to do so took to the boats or leapt into the water, and most of the Europeans were picked up by the boats of the *Naniwa*. The first arrival of this news in England produced a certain amount of excitement. Leading articles were freely garnished with such phrases as "insult to the "British flag," "ample apology to be exacted from Japan," "wanton outrage in time of peace," "full compensation "for the owners and for the relations of such of the "English officers and engineers as may have perished." It was some time before the facts of the case were clearly ascertained [1], and still longer before the public was educated in the legal principles applicable to the occurrence. It is, however, now, I believe, pretty well understood that the views asserted from the first by Professor Westlake and myself were correct [2]. As early as August 8, I maintained, in a letter to the *Times*, that a state of war may well exist without declaration; that a neutral vessel, after notice of a war so existing, is liable, if engaged in a forbidden traffic, such as the carriage of troops for a belligerent, to be arrested and carried in for condemnation by a Prize Court, and that, if she refuses to allow herself so

[1] For a good account of them by Captain S. Eardley Wilmot, R.N., see the *Fortnightly Review* for January, 1895.

[2] We were, however, described, in a paper called *Concord*, October, 1894, as "recreant doctors of law," "backsliding jurists," who "have "brought on their own reputations, or on their profession, a scandal "and reproach which public opinion will insist on having removed."

to be carried in, her submission may be compelled by the use of so much force as may be necessary. Applying these principles to the case in question, I went on to say:

The *Kowshing*, therefore, before the first torpedo was fired, was, and knew that she was, a neutral ship engaged in the transport service of a belligerent. (Her flying the British flag, whether as a *ruse de guerre* or otherwise, is wholly immaterial.) Her liabilities, as such ship, were twofold:—

1. Regarded as an isolated vessel, she was liable to be stopped, visited, and taken in for adjudication by a Japanese Prize Court. If, as was the fact, it was practically impossible for a Japanese prize crew to be placed on board of her, the Japanese commander was within his rights in using any amount of force necessary to compel her to obey his orders.

2. As one of a fleet of transports and men-of-war engaged in carrying reinforcements to the Chinese troops on the mainland, the *Kowshing* was clearly part of a hostile expedition, or one which might be treated as hostile, which the Japanese were entitled, by the use of all needful force, to prevent from reaching its destination.

The force employed seems not to have been in excess of what might lawfully be used, either for the arrest of an enemy's neutral transport or for barring the progress of a hostile expedition. The rescued officers also having been set at liberty in due course, I am unable to see that any violation of the rights of neutrals has occurred. No apology is due to our Government, nor have the owners of the *Kowshing*, or the relatives of any of her European officers who may have been lost, any claim for compensation.

Our review of the course of recent events would seem to lead to the following conclusions. Japan, apart from the lamentable outburst of savagery at Port Arthur, has conformed to the laws of war, both in her treatment of the enemy and in her relations to neutrals, in a manner worthy of the most civilized nations of Western Europe. China, on the other hand, has given no indication of her acceptance of the usages of civilized warfare; and, although she was prepared to exercise the rights conceded to belligerents against neutral commerce, took no steps, by establishing prize courts, to secure vessels

engaged in it from improper molestation. This is the more to be regretted, because for more than thirty years past International Law has been studied at Pekin. The works of Wheaton, G. F. de Martens, Woolsey, and Bluntschli, as well as the *Manuel des Lois de la Guerre* of the "Institut de Droit International," have been translated into Chinese; and the translator, Dr. Martin, is Professor of the Law of Nations at the Imperial College of Tung-wen. But the Chinese have adopted only what I have already described as the rudimentary and inevitable conceptions of International Law. They have shown themselves to be well versed in the ceremonial of embassy and the conduct of diplomacy. To a respect for the laws of war they have not yet attained.

VII

PACIFIC BLOCKADE[1]

THE institution of a "blockade" has long been a well-known operation of war[2]. It consists in the prevention of traffic between the ports of an enemy and the open sea. The restriction of the term to maritime warfare, it may be remarked in passing, is comparatively modern. The earliest use of the term was to describe the operation of besieging a town, by so surrounding it with blockhouses as to cut off its communications with the neighbouring country[3]. The essentials of a valid blockade, in the modern sense of the term, as well as the effects to be attributed to it, are now well understood. A blockade to be binding must be "effective," that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy; and its existence must be duly notified, i.e. either diplomatically to the Powers concerned, or to their ships individually. Its effects are, that any vessel violating the blockade, although it may belong to a neutral

[1] A Lecture, delivered in 1897. *Fortnightly Review*, July, 1897.

[2] Cf. Lord Stowell's language in the Hurtige Hane, 3 Rob. 326.

[3] It was in an analogous sense that France, in 1831 and 1852, threatened to declare "un blocus hermétique" of Switzerland.

Power, and irrespectively of the character of the cargo[1], may be arrested, and, after due condemnation in a Prize Court, is lost to the original owner. These rules of international law are an obviously reasonable compromise between the right of the belligerent to carry on his war, and the right of the neutral to carry on his trade. They neither need, nor are aided by, the artificial justification provided for them by M. Hautefeuille, who supports them by the fiction that the blockading Power has, by conquest, acquired a substituted sovereignty over the territorial waters of the enemy[2]. Blockade is thus a recognized mode of making war, giving rise to rights and duties which have long ago been defined by International Law. But recourse has occasionally been had to the same measure in time of peace; and no little uncertainty has prevailed as to the legal consequences which should then be attributed to it. As so employed, it is now usually described as a "Pacific Blockade"; a phrase originally suggested by M. Hautefeuille, a severe critic of the practice, in his work on the *Rights and Duties of Neutral Nations*, published in 1849[3]. A maritime closing of ports in time of peace had, indeed, been heard of for the first time little more than twenty years before that date, when, in 1827, Great Britain, France, and Russia blockaded the coast of Greece. The cases of the sort which have subsequently occurred are certainly less than twenty in number. They differ widely in character, and must be grouped in classes before they can be properly understood. We shall find, I think, that they may be reduced to three categories. In all of them the measure is put in force by a Sovereign State. In two of them the measure is also directed

[1] It would be hardly necessary to remark that no questions of "contraband," or of "free ship, free goods," are raised by the institution of a blockade, but for the fact that some Members of Parliament seem to be of the contrary opinion.

[2] T. iii. p. 7.

[3] T. iii. p. 176.

against a Sovereign State, but in one case is not so directed. The three categories may be distinguished as aiming respectively at REPRISAL, INTERVENTION, and SUPPRESSION. Let us begin by the first and simplest case.

I. The quarrels of Sovereign political communities can be settled, if both parties stand firmly to their alleged rights, only by war. But a State which has a grievance against another, and has failed to get redress by negotiation, is sometimes able to get it by resorting to acts hostile in character but done without warlike intention. Such acts are, of course, in their inception, of an ambiguous nature. If the State against which they are directed yields to the pressure put upon it, and redresses the grievance complained of, the pressure is removed, and the incident is closed. The State in question is, however, fully entitled, if it shall so choose, to resist instead of yielding to the pressure. In this case, with or without any formal declaration to that effect, the two Powers are at war. The pressure which one State puts upon another with no intention of bringing about a war, but capable always of being taken as a challenge to fight, may be applied by acts of various kinds, the most general name for which is "reprisals"; a term originally signifying the "taking back" of property of which one had been wrongfully deprived. Such acts are, for instance, the non-performance of treaty obligations; the laying of an embargo on ships of the offending State found in the harbours of the State aggrieved; the seizure of such ships on the high seas; the occupation of a portion of the territory of the offending State; or the closing to access from the sea of a portion of its coast-line. All of these measures are well-recognized steps in the conduct of warfare, but recourse may also be had to all, or any of them, by way merely of "reprisals," the essential characteristics of which are that they are strictly limited in scope,

and that they take place in time of peace[1]. Reprisals have often been criticized, though with little reason, as harsh and even treacherous; as affecting the property of individuals who are not responsible for the grievance complained of; and especially on the ground that they are mainly resorted to by strong against weak States. On the general question, it was well said by Vattel that—

> if a Government, having ground of complaint, seizes ships or goods of the offending nation, and holds them by way of security for getting satisfaction, without proclaiming war, you hear from certain quarters a cry of "robbery"; whereas, if war had been declared instead, no objection would have been raised. Strange forgetfulness of reason and true principles! The duty of Sovereigns is to maintain the rights of their State, and to do this by the gentlest measures. The Prince, therefore, who resorts to reprisals, instead of final rupture, is to be praised for his moderation and prudence.

Provision has accordingly been made in several treaties for a resort to reprisals rather than to a declaration of war, in case of disagreement between the contracting parties. So, for instance, in a treaty of 1816 between Sardinia and the Bey of Tunis, and so in the Treaty of Adrianople, of 1829, between Russia and Turkey. It has been generally understood that recourse should not be had to reprisals till every effort has been made to obtain redress in other ways: as was laid down in the Duke of Newcastle's celebrated despatch addressed in 1751 to the King of Prussia: "Only in cases of violent injuries, "directed or supported by the State, and justice absolutely "denied by all the tribunals, and afterwards by the "Prince." An instance of an effective resort to reprisals on the part of this country occurred two years ago, when Nicaragua was induced by the temporary occupation of Corinto to pay £15,000 by way of indemnity for the arrest of the British Vice-Consul and other British subjects.

[1] "Observa represaliis locum non esse nisi in pace." Bynkershoek, *Q. I. P.* i. c. 25.

The cases in which reprisals have taken the form of the closing of access to a coast-line—in other words, of a pacific blockade—have been the following:—

1. In 1831, in order to exact redress for injuries to French subjects by Don Miguel, the French fleet, besides forcing the passage of the Tagus and seizing a number of Portuguese vessels, blockaded several points on the coast of Portugal without any declaration of war. The result was a treaty, signed at Lisbon on July 14, 1831, under which reparation was made to France for the injuries complained of, and the captured Portuguese vessels were restored.

2. In 1836 the coast of New Grenada was blockaded by Great Britain.

3. In 1838 France blockaded Mexican ports, but the operation resulted in the outbreak of a war between the two countries.

4. From 1838 to 1840 the Plata was blockaded by France, and again, from 1845 to 1848, by France and Great Britain jointly. Both M. Guizot and Lord Palmerston, at different times, expressed their misgivings as to the way in which this blockade had been applied, but its compatibility with peaceful relations between France and the Argentine Republic was affirmed by the Conseil d'état, in the case of the *Comte de Thomar*, in 1848[1].

5. In 1850, failing to get redress for insults offered by Greek soldiers to the crew of the British ship *Fantôme*, as also for damage to the property of a British subject, Don Pacifico, caused by Greek troops and rioters, Great Britain, besides laying an embargo on Greek shipping and seizing Greek vessels on the high seas, blockaded the ports of Greece. These measures produced a remonstrance on the part of Russia, which deserves notice as embodying diplomatically some of the objections which may be taken to pacific blockade.

[1] Pistoye et Duverdy, t. i. p. 390.

It remains to be seen (said the Russian Minister), whether Great Britain, abusing the advantages which are afforded her by her great maritime superiority, intends henceforward to disengage herself from every obligation, as well as from all community of action, and to authorize all Great Powers, on any fitting opportunity, to recognize towards the weak no other rule but their own will, no other right than their superior strength[1].

The controversy was settled, through the mediation of France, on the terms that M. Pacifico was to receive from Greece an indemnity for such losses as he could be shown to have actually sustained. His claim for £21,000 was eventually cut down to £150.

6. A British ship, the *Prince of Wales*, having been wrecked in 1861 on the coast of Brazil, was plundered. No redress being forthcoming, in 1862 a blockade was instituted, and Brazilian merchant vessels were seized and detained till their Government paid between £3,000 and £4,000 by way of compensation to the owner of the plundered vessel. This sum was only paid under protest, and diplomatic relations were suspended for several years between the two countries.

7. In 1879 Chili blockaded the ports of Bolivia, then in alliance with Peru, more than a month before declaring war against the last-named country.

8. In 1884 France, while still at peace with China, proclaimed a blockade of the coast of Formosa, between Cape Noo Shan and the Bay of Soo-an, having previously bombarded and captured Kelung, and dismantled the Mingan forts. The British Government intimated to France that "the blockade must be taken by neutral Powers as a notification of a state of war," and consequently prohibited the coaling of French ships at British ports. The French, however, continued to maintain that they were only exercising reprisals, till the early termination of their quarrel with China rendered further diplomatic discussion unne-

[1] *Annual Register*, 1850, p. 294; cf. Martens, *Causes Celèbres*, t. v.

cessary. The President of the Council of Ministers, November 26, 1884, in the Chamber of Deputies, after enumerating a dozen cases of pacific blockade, said:—

> Here, gentlemen, are reasons enough for naturalizing in the International Code a military operation which must certainly be reckoned among acts of hostility, yet need not, in order to be regular, and to produce legal effects, be preceded by a formal declaration of war.

He went on to say that a declaration of war would have almost necessarily resulted in a stoppage of all trade with China.

9. In 1893 France proclaimed a blockade of the Menam, without considering herself to be at war with Siam. The king yielded to the pressure applied to him before much discussion could take place as to the character to be attributed to it.

II. In another series of instances, a pacific blockade has been instituted, usually by more Powers than one, without any specific complaint of wrong-doing on the part of the Power whose coast is blockaded, but merely to induce it, by means less severe than actual warfare, to conform its policy to that of the blockading Power or Powers, a policy which has been dictated sometimes by sympathy with a revolutionary movement, but more usually by a desire for the preservation of the peace of Europe. The blockade in this case amounts to an act of intervention.

1. The first instance of this kind, which is indeed also the first instance of the institution of a pacific blockade for any purpose, occurred in 1827, when Great Britain, France, and Russia, being determined to put an end to the sanguinary struggle between the Ottoman Porte and the Greeks, agreed, in the Treaty of London of July 6 in that year, to offer their mediation between the contending parties, and to insist on an immediate armistice being granted by the Porte; ulterior measures to be taken

against either party continuing hostilities. "The High "Powers will, jointly, exert all their efforts to accomplish "the objects of such armistice, without, however, taking "any part in the hostilities between the two contending "parties." The Porte having on August 31 refused an armistice, the Ministers of the three Powers, on the following day, resolved to inform their admirals that "neutral" vessels are not to be allowed to bring into Greece succours intended for the Turks. The "Greek "blockade" (the phrase is employed) was to extend from the Gulf of Volo to the mouth of the Aspropotamos. The admirals carried out their instructions; one result of their action being the destruction of the Turkish fleet at the battle of Navarino. The Ministers of the Allied Powers at Constantinople had naturally some difficulty in making the Porte understand that their respective Governments still considered themselves to be at peace with Turkey. The Reis Efendi was rather of opinion that peace and war are as difficult to mix together as oil and water. "C'est abso- "lument," he said, "comme si, cassant la tête d'un homme, "je l'assurerais en même tems de mon amitié. Un pareil "procédé ne serait-il pas fol? Telle est la question "présente[1]."

2. In 1833 Great Britain and France blockaded the coast of the Netherlands, to bring about the consent of the King to the separation of Belgium from his dominions.

3. In 1860 Sardinia, without going to war with the King of the Two Sicilies, blockaded Gaeta and Messina, in aid of the insurgents against his government. The blockade of the following year was an operation of war.

4. In 1880 the Powers would not agree to Mr. Gladstone's proposal to blockade Smyrna, as a means of

[1] *Parl. Papers*, 1830, Protocols of Conferences held at Constantinople, p. 71.

inducing the Porte to carry out the provisions of the Treaty of Berlin and subsequent conventions relating to Montenegro; but the cession of Dulcigno to Montenegro, in November of that year, was brought about by a demonstration on the part of the allied fleets, accompanied by threats of a blockade.

5. In 1886 the mobilization of the Greek army produced strong remonstrances from the great Powers, which had no wish to see the Eastern Question re-opened. No satisfactory reply to their demand for demobilization being forthcoming, a blockade of the coasts of Greece was notified on May 8 by all the Powers except France, against vessels under the Greek flag. The measure was effectual, although fighting had already occurred on the Thessalian frontier, and the blockade was raised on June 7.

III. The third category of blockades instituted without war differs widely from the two categories already considered. They are not instituted against the territory of a foreign Sovereign, but against such portions of a State's own territory as, in one way or another, are no longer under its control. They aim at the suppression of the intruding authority.

1. During the Circassian insurrection of 1836 Russia gave notice that certain ports were under the surveillance of a naval squadron, which had orders to warn off trading vessels and prevent them from communicating with the coast. She, in fact, instituted an effective blockade of the ports in question, and duly notified it, though avoiding the use of the term. The owner of a British vessel, the *Vixen*, which had been turned back, so losing her voyage, complained to our Government, which did not, however, press the Russian Government for compensation.

2. In 1866 the United States announced a blockade of the ports of the Southern Confederation. Much discus-

sion took place as to the international character of the measure, which, being supported by an adequate force, led to the recognition of the Southern States by Great Britain and France as *de facto* belligerent[1].

3. From 1866 to 1868 Crete was blockaded by the Turks, who thus succeeded in repressing a formidable insurrection in the island[2].

4. In 1888–89 a very anomalous blockade of the coasts of the Sultanate of Zanzibar was instituted by the admirals commanding the British and German squadrons in those waters. It was expressed to be "by order of our Governments, and in the name of his Highness the Sultan of "Zanzibar," and to be directed exclusively against the importation of "materials of war and the exportation of "slaves." It may be noted that this blockade was instituted, not like those just mentioned, by the territorial Sovereign, but by the Western Powers with, at best, the approbation of the territorial Sovereign. It should also be noted that, although in the despatch addressed to the Sultan he was informed that one of the objects of the blockade about to be established would be to cut off "the importation of munitions of war to his insurgent "subjects," the operation was in reality a measure of high international police, exercised, directly or indirectly, by all the Powers of Western Europe who were interested

[1] See Bernard's *Neutrality of Great Britain*, &c., pp. 79, 132, for Lord Russell's despatches upon the subject. For the view of the transaction taken by the Supreme Court of the United States, see the *Hiawatha*, 2 Black, 676.

[2] See *Parl. Papers*, 1866, 7, 8. On September 23, 1866, Mustafa Pasha, in a circular to consuls, notified the blockade of Crete, except Canea, Retimo, Candia, Suda, and Spinalonga: all ships carrying munitions of war or armed men to be stopped and seized.

In 1870 France blockaded certain of her own ports which were in the hands of the Germans. This is only mentioned here because the measure was taken by France against French territory. What occurred was, of course, in no sense an act of pacific blockade, but an operation of war.

in the locality, for the prevention of a traffic generally recognized by them as cruel and immoral[1].

5. To the category of blockades now under consideration, of those namely which are instituted with a view to the suppression of an insurrection or other intruded authority, must also be assigned the blockade of Crete, which has occupied so much of our attention since its commencement in March last.

Before, however, examining more closely the character of this last-mentioned blockade, it may be as well to consider generally the questions which have arisen with reference to blockades without war, whether they are instituted in order to obtain redress for an alleged wrong, or to enforce compliance with a line of policy which commends itself to the blockading Power, or to quell usurped authority in the State's own territory; in other words, whether they are instances of reprisals, intervention, or suppression. It is obvious that the pressure exercised by such blockades may be applied (1) only to vessels belonging to the Power blockaded, or (2) also to vessels of other Powers.

(1) It is difficult to understand the objections which have been made to the more limited form of the measure. If reprisals are to be allowed at all, or if, apart from reprisals, a certain amount of semi-hostile pressure is preferable to war, why is a blockade harsher, is it not rather far less harsh, than an embargo, or the occupation of a province, or the sequestration of merchant vessels on the high seas? MM. Gessner[2] and Geffken[3], who

[1] Italy and Portugal aided actively in the blockade, and France sent a warship to visit vessels flying the French flag. Auxiliary steps were taken on the mainland by the Congo State and the Netherlands. Cf. M. Rolin-Jaequemyns in the *Revue de Droit International*, t. xxi. p. 207.

[2] *Annuaire de l'Institut de Droit International*, 1887, p. 288.

[3] *Droits des Neutres sur Mer*, p. 268.

say that these last-mentioned measures are less injurious to the interests of the State affected, as a whole, than a blockade is, give no reason for their opinion.

Why, again, is it made a matter of reproach that a pacific blockade has almost always been employed, as a matter of fact, by strong against weak States? Unless weak States are to be allowed to shelter their wrong-doing, or their persistence in a policy detrimental to the peace of the world, behind their weakness, they must be brought to reason either by forcible pressure in time of peace, or by war. There can be little doubt which of these two methods is better adapted to oblige and enable a weak State to make concessions, which in any case are inevitable, with the least injury to itself and the least disturbance of the peace of the world. Nor is there more force in the objection that because the blockades contemplated in the Armed Neutralities, or in the Declaration of Paris, are such as take place in time of war; those which take place in time of peace were prohibited by these and similar diplomatic acts.

(2) But pacific blockades may be, and in several instances have been, so employed as to deny access to the blockaded coast, not only to vessels of the Power to which the coast belongs, but also to all other vessels. Such an application of force differs from an embargo, from seizure of ships on the high seas, and from all other steps to which recourse is commonly had by way of reprisals, in that it directly interferes with the commerce and traffic of States which have no concern in the controversy which occasioned this employment of semi-hostile pressure.

Such interference is unavoidable in time of war, when a working compromise has been arrived at between the rights of belligerents and neutrals; but apart from the existence of a war, which alone gives rise to "belligerency" and to "neutrality," properly so called, and alone

necessitates the institution of Prize Courts, its legitimacy can hardly be said to be recognized. It is this extension of the application of pacific blockade which has involved the whole practice in some disrepute. The abuse of the practice has discredited its use; but the two things are separate, and have been clearly distinguished in recent practice and discussion.

The earlier blockades, from 1827 to 1848, seem to have been directed against the flags of all nations alike, and to have been protested against only by the Hanse Towns, which in 1838 objected to the inconvenience thus caused to their traders by the French blockade of Buenos Ayres. The French Minister for Foreign Affairs replied merely that France had taken pains to render the measure in question as little hurtful to neutrals as possible[1]. A few years later, however, M. Guizot acknowledged the ambiguous character of the proceeding, and in 1846 Lord Palmerston, in a letter to Lord Normanby, the British Ambassador at Paris, went so far as to say, perhaps without due consideration:—

> The real truth is, though we had better keep the fact to ourselves, that the French and English blockade (of the Plata) has from the first to the last been illegal. Peel and Aberdeen have always declared that we have not been at war with Rosas; but blockade is a belligerent right, and unless you are at war with a State, you have no right to prevent ships of other States from communication with the ports of that State, nay, you cannot prevent your own merchant ships from doing so[2].

Pacific blockades have been directed against the flags of all Powers on several subsequent occasions; notably by the French at Formosa in 1884, and at the Menam in 1893; as also by the Great Powers at Crete in the present year; in the first-mentioned case, with distinct notice that Great Britain would treat such action as

[1] *Annuaire de l'Institut de Droit International*, 1887, p. 292.
[2] Dalling, *Life of Lord Palmerston*, iii. p. 327.

equivalent to a declaration of war by France against China[1]. But in 1850 the English blockade of the Greek coast was expressly directed only against the Greek flag, as was also the collective blockade of that coast in 1886. International practice has thus tended towards a restriction of the application of pacific blockade to the flag of the blockaded Power. The opinion of writers upon the subject tends still more clearly in the same direction. M. Perels seems to be supported only by M. Heffter[2] in maintaining that the measure may be lawfully extended so as to affect the ships of third States. The same reasons, he seems to think, which justify an aggrieved Power in interference with the commerce of third States with its enemy in time of war may justify an interference with such commerce resulting from semi-hostile pressure in time of peace[3]. The opposite view is taken by F. de Martens, W. E. Hall, Neumann, De Negrin, Oppenheim, Wurm, Glas, Fiore, Calvo, Bluntschli, Wharton, Bulmerincq, Nys, Gessner, Geffken.

The opinions of international lawyers upon this point are, however, most conveniently focussed in the resolutions adopted by the "Institut de Droit International" at its meeting at Heidelberg in 1887. They are to the following effect: The establishment of a blockade when no state of war exists ought only to be considered as permissible by the law of nations, subject to the following conditions. (1) Ships under foreign flags may enter freely notwithstanding the blockade. (2) The pacific blockade must be declared and notified officially and maintained

[1] Lord Granville had laid down, in a despatch to M. Waddington of Nov. 11, 1884, that "the contention of the French Government, that "a 'pacific blockade' confers on the blockading Power the right to "capture and condemn the ships of third nations for a breach of such "a blockade, is in conflict with the established principles of inter-"national law."

[2] *Völkerrecht der Gegenwart*, § 111.

[3] *Annuaire de l'Institut de Droit International*, 1887, p. 279.

by a sufficient force. (3) The ships of the blockaded Power which do not respect such a blockade may be sequestrated, but at the termination of the blockade must be restored, with their cargoes, to their owners, who are to have no claim for compensation.

These resolutions, adopted with substantial unanimity, after full discussion of the report and counter-report of a committee which had been appointed to examine the question two years previously, may be taken as a well-considered expression of expert European opinion[1].

They deal, it will be observed, not only with the classes of ships against which the blockade may be enforced, but also with the mode of its enforcement. Temporary sequestration is to be the only penalty to which even ships of the blockaded Power are to be exposed for violation of the blockade. In the earlier instances, at any rate, such ships, and during the French blockade of Mexico ships of third Powers also, were actually confiscated. England in 1850 seems to have set the example of directing the blockade only against the flag of the blockaded Power, and of sequestrating, instead of confiscating, vessels of that Power which attempted to break through. Her example was followed in both respects by the allied Powers in 1886.

It would appear, therefore, that, according both to practice and competent opinion, a blockade in time of peace is a legitimate measure of coercion, as against the

[1] It has been erroneously stated, even by Dr. Wharton, *Digest*, vol. iii. p. 408, that the "Institut" had, in 1875, expressed itself as opposed to pacific blockade for any purpose. The question was never before the "Institut" in 1875; and the mistake is due to the fact that in a "Questionnaire" addressed to the members of a Committee on Private Property at Sea, which reported in that year, attention had been incidentally called to the legality of pacific blockades, but without distinguishing between the different modes in which they have been applied. A majority of the members of the Committee replied in a sense adverse to the practice, as thus unlimited in its scope. See *Revue de Droit International*, t. vii. p. 611.

State, or body of insurgents, which it is desired to bring to reason. "Il n'est guère possible aujourd'hui," says M. Rivier, "de dénier au blocus le caractère d'une institu-"tion du droit des gens actuel[1]." Whether it is also legitimate if so applied as to interfere with the commerce of third Powers is not so certain. The Heidelberg resolutions of the "Institut de Droit International," which condemn it if so applied, do not perhaps sufficiently distinguish between what I have described as cases of "Reprisals," "Intervention," and "Suppression." When the blockade is by way of reprisal, i. e. when one State is putting pressure upon another to obtain redress for its private grievance, it may seem unreasonable that the aggrieved State should call upon the rest of the world so far to co-operate with her as to tolerate a general derangement of their trade. Third Powers may more fairly be called upon to make this sacrifice when the blockade has a high political object, as in a case of intervention, or is a measure of self-preservation, such as the suppression of a rebellion. Such a claim would seem more especially admissible where the blockade amounts to an intervention not by any one State for the furtherance of its individual advantage, but by the Great Powers, or even by some smaller group of States, in the interests of European peace.

England asked for nothing of the sort in the action which she took on behalf of Don Pacifico, and she insisted that France should similarly abstain from interfering with British trade by the blockade of Formosa. We may take it to be fairly established by recent practice, in accordance with a consensus of expert opinion, that a pacific blockade by way of reprisal ought to be directed only against the commerce of the State blockaded. It is still an open question whether, when the blockade is

[1] *Principes du Droit du Gens*, 1896, ii. p. 198.

instituted for other purposes, it may not be directed against the commerce of third States also.

A few words in conclusion, with special reference to the recent blockade of the island of Crete. The critics of this measure have made merry over certain tolerably obvious departures which may be detected in it from the simpler rules of the international game. "With whom," they have inquired, "are we at war? If not with Turkey, why are "we blockading her territory? If not with Greece, why "are we impeding the operations of Colonel Vassos? "When war broke out between Greece and Turkey, why "did we not at once put an end to an operation which "favoured one side rather than the other?" and so forth. They forget that International Law is no cast-iron scheme into which facts must be fitted at any cost, but rather a body of rational principles capable of adjustment to new combinations of circumstances. The Cretan blockade was instituted on March 18, 1897, by the Admirals commanding the squadrons of the Great Powers on the spot, by a notification to the following effect:—

L'île de Crète sera mise en état de blocus à partir du 21 Mars à huit heures du matin. Le blocus sera général à l'égard de tous les bâtiments portant pavillon grec. Les navires des six puissances ou neutres pourront venir dans les ports occupés par les puissances et y débarquer leurs marchandises pourvu qu'elles ne soient ni destinées aux troupes grecques ni dirigécs vers l'intérieur. Les navires pourront être visités par les bâtiments de la flotte internationale[1].

The object of the Powers in resorting to this measure was to put an end to the internecine struggle between

[1] On the objects of the blockade, see Mr. Curzon's speeches in the House of Commons, March 25, April 26, and May 7, 1897. Just such a blockade had been proposed by Austria, in July, 1896, but, though approved of by the other Powers, was not carried into effect, in deference to the objections then made by Great Britain. *Parl. Papers*, Turkey, No. 7, 1896–7.

the two parties in the island, till its future destinies should have been provided for by European arrangement; and especially to bring about the withdrawal from Crete of the regiments of Greek regular troops, whose presence added so much to the difficulties of the situation. We were officially informed that all that was done by the Powers in Crete was done with the approbation of the Sultan of Turkey, whose ships seem, indeed, to have taken some part in the enforcement of the blockade.

How far the measures taken have been successful in bringing about the desired result is not the question now before us. Nor are we concerned to consider whether the autonomy of the island, or its incorporation with the kingdom of Greece, would most conduce to the sum of human happiness. Our business is solely with the character of the blockade from the point of view of International Law. It belongs, as we have already stated, to the category of blockades the object of which is the suppression of an insurrection. Had it been instituted by the Sultan it would have been a mere repetition of what occurred in 1866. The fact that it was instituted by the Great Powers, with the Sultan's assent, causes it to resemble the blockade of Zanzibar in 1888; nor is it without analogy to the bombardment of Alexandria in 1882, on behalf of the Khédive; but the peculiar relations of the Great Powers to the Ottoman Empire give to the measure an aspect of its own. The Great Powers, under a series of treaties, and by a long course of joint action in what is known as the Eastern Question, have acquired a guardianship over that Empire amounting almost to a protectorate, exercised not so much in the interest of the Turks as in that of their subject races, and of the peace of Europe. With these objects in view the Powers have repeatedly interfered with the administration of the Empire, have stayed the hand of the Sultan in dealing with rebellious provinces, have retrenched his dominions, carving out of

them new independent kingdoms and principalities, and in many other ways have exercised a species of *condominium* with the titular Sovereign. They have been acting in Crete as they have acted elsewhere. On the one hand, they have refused to allow the Sultan further to misgovern the island, or even to put down in accordance with Turkish methods the insurrection which had once more resulted there from his misgovernment. On the other hand, they have insisted that to them alone it belongs to decide on the future destinies of the population.

To discuss the Eastern Question, while ignoring the paramount position which the European Concert has made for itself in the Ottoman Empire, is sheer waste of time. By the consent of nations Turkey has become something like a semi-sovereign State under the tutelage of Europe. The Powers in Crete are, therefore, as it were, at home; especially when their presence is welcomed there by the Sovereign. They are entitled to put down an insurrection in the island, and none the less that it is abetted by a body of foreign filibusters. They are in a position to say, on the one hand, to the Turkish garrison, on the other to the insurgents: "Thus far, and no "farther." They are also entitled, I venture to think, to say to foreign nations: "The traffic of your merchant "vessels must not be so carried on as to interfere with "the discharge of the important duty on which we are "engaged." As a matter of fact, no foreign nation has, I believe, protested diplomatically against this blockade, as being an unlawful interference with its commerce, or is it likely to do so. Any protest of the kind would lead to a very interesting discussion of the extent to which the right to institute a pacific blockade has been incorporated into modern International Law.

Difficulties have also been ingeniously propounded as to the result of actions which might conceivably be brought in a British Court, against a British officer, for forcible

interference with blockade-runners, supposing them to belong to subjects of this country, or of one of the other blockading Powers, or of Turkey, or of a third Power such as the United States. It has even been suggested that the officer might be exposed to an indictment for murder. Here, again, since the questions raised would be partly novel, we might look for interesting argument should occasion arise. This is not the place for advising the British officer as to his appropriate defence, either to an action for damages or to a criminal indictment. It may, however, be worth while to observe that should the Court, in either case, hold that a pacific blockade, such as has been enforced in Cretan waters, is recognized by International Law, and, if so, by the law of England, into which International Law is incorporated, *cadit quaestio.* We must also remember that English Courts only very sparingly, and under statutory conditions, assume jurisdiction over extra-territorial crime; that "act of State," i.e. the authority of the British Government, is a good plea to an action of tort brought by a foreigner[1]; and that no action, by whomsoever it may be brought, will lie in England for an act which is not tortious both by the law of England and by that of the place where it was committed[2].

It is undoubtedly the case that several questions arising out of the practice of instituting blockades in time of peace are still unsettled. They can only be settled by the gradual growth of an international agreement upon the subject, formed, as the whole of International Law has been formed, by converging considerations of reasonableness and national interest. A step will have been taken towards the attainment of such an agreement when it has been generally realized that blockades in time of peace have hitherto been too much discussed, even by the

[1] *Buron* v. *Denman*, 2 Ex. 167. [2] *Phillips* v. *Eyre*, L. R. 6 Q. B. 1.

"Institut de Droit International," merely as a species of reprisals. They are also employed in support of an intervention, especially of an intervention of the Great Powers collectively; and they are a mode of bringing about the suppression of a revolt. As they belong to one or other of these classes, it may well be that different effects will be attributed to them by the Law of Nations.

VIII

RECENT DIPLOMATIC DISCUSSIONS, AS ILLUSTRATIONS OF THE SYSTEM OF INTERNATIONAL LAW[1]

It has been remarked that one good result of a war is an improved knowledge of Geography.

Many of us, whose ideas of South-Eastern Europe were of the vaguest description, have been induced by recent events to become aware of the existence of Kezanlic and Plevna, and even to trace the courses of the rivers and mountain ranges which give to each of these places its military importance. Some few of us have probably extended our researches so far as to gain an approximately accurate conception of the territory of what till the other day was the Ottoman Empire, and of its relations to the territories of neighbouring States.

It has occurred to me that the diplomatic discussions which have taken place during the last two or three years might be made to perform an analogous service. Giving occasion, from time to time, to a telegram, or an incidental

[1] A Lecture delivered May 16, 1878. In French in the *Revue de Droit International et de Législation comparée*, t. x. p. 688.

paragraph; sometimes supplying a topic for a leading article; eventually entombed in a Blue-book;—such discussions, even when they meet the eye, make but little impression upon the memory. It is, however, not impossible that, if re-stated in a short compass, they might be made to throw some light upon the method and contents of International Law. I propose therefore to present them to you, without regard to their chronological sequence, but as illustrating such a systematic view of the Law of Nations as I am in the habit of explaining and justifying in my ordinary courses of lectures.

A very slight outline of such a view will provide a sufficient framework into which our diplomatic facts may be fitted, each in its proper place. The Law of Nations is but private law "writ large." It is an application to political communities of those legal ideas which were originally applied to the relations of individuals. Its leading distinctions are therefore naturally those with which Private law has long ago rendered us familiar. In International, as in Private, law, we are concerned with the "Persons" for whose sake rights are recognized; with the "Rights" thus recognized; and with the "Protection" by which those rights are made effective. We have a "law of Persons"; a "Substantive law," which sets forth and explains the rights of those persons; and an "Adjective law," which describes the Procedure by which redress is to be obtained when those rights are violated.

The international "law of Persons" consists of an investigation into the nature of a Sovereign State, and of the deviations from it. The "Substantive" law of nations inquires into the character, origin, and termination of the rights which States may enjoy; while the "Adjective" law of nations describes the procedure by which redress is obtained for international wrong-doing. This last-mentioned department is subdivided into the law which

regulates the relations of the belligerents to one another, and the law which regulates the relations of each belligerent with States which take no part in the war. The whole science is thus divisible into four great chapters, which may be shortly described as treating respectively of "Status"; of "Peace"; of "Belligerency"; and of "Neutrality." It is under those four heads respectively that I propose to offer my historical illustrations.

I. The only question of international status which has recently been raised had reference to the United Principalities of Wallachia and Moldavia, hereafter doubtless to be better known as "Roumania." When, in 1866, Prince Charles was invested with the dignity of hereditary Prince of these countries, it was expressly stipulated on behalf of the Porte:—"that no treaty or convention can be directly "concluded by the Principalities with foreign Powers." This principle was to be relaxed only in favour of "arrange-"ments of a local interest, between two neighbouring ad-"ministrations, and not bearing the form of an official "treaty, or a political character[1]." With their accustomed patient pertinacity, the Principalities set to work to evade a provision which was conclusive proof, if proof were needed, of their lack of the characteristics of a Sovereign Power. They began by sending in their adhesion to the Geneva Convention; to which the Porte had long before acceded on behalf of its vassal States, as well as of itself[2]. They then began a series of negotiations, which Lord Derby described as "prompted rather by political than by "commercial considerations[3]," but which, thanks to the favour of the three great Empires, established the Roumanian right to make Treaties of Commerce[4].

[1] Firman of October 23, 1866. Cf. the Egyptian firman of 1873.

[2] Nov. 30, 1874. See the protests of the Porte in *N. R. Gén.* 1876, p. 646.

[3] *Parl. Papers*, 1875 [c. 1242].

[4] A treaty with Austria, June 22, 1875; a provisional declaration with Great Britain, Nov. 30, 1876.

But for some recent misstatements, it would be hardly worth while to remind you, that were all the nations which are recognized as being fully within the pale of International Law to assemble in Congress, they have no such organization as would give to their decisions a legislative force binding a dissentient minority.

II. The substantive rights of nations are so intimately connected with the ownership of a territory, that the first topic of the law of Peace is the nature and acquisition of international dominion. In July, 1875, an award was made by the President of the French Republic which settled a long-pending question as to the ownership of the territory in the neighbourhood of Delagoa Bay on the east coast of Africa. International law requires for the acquisition of "Dominium" not only Discovery, but also subsequent Settlement; and applies to questions which may arise as to settlement much of the Roman doctrine of "Possessio." It was admitted that the Portuguese had discovered the whole region, and had settled upon the north and west coasts of the Bay, by placing there factories and forts. The question in dispute was whether their discovery had been followed by settlement upon the south coast also. The British Government maintained that this was not the case. It conceded that the Portuguese had well occupied the ground upon which their fortress stood, and the ground covered by the guns of the fortress, but questioned how much further the occupation extended. "Some limit," it said, "must necessarily exist ". . . the independence or dependence of the inhabitants "becomes the only test which can be relied on in order to "define those limits." It maintained that the native kings south of the Bay had remained, as a matter of fact, independent of the Portuguese, and had ceded their country to England in 1823. The question was referred to arbitration, and decided in favour of Portugal.

Subordinate to questions of ownership are questions of international servitudes, rights of way and the like. A new question of this kind has very nearly been raised with reference to the Suez Canal. It will no doubt some day have to be decided how far the sovereign of a country who allows so indispensable a water-way to be made through his territory is entitled to close it at will.

The next in order among the rights of a State is that of Jurisdiction, or "Imperium."

The authority of a Government is, to use a well-known phrase, "over all causes within its dominions supreme." But a doubt has recently arisen whether the "dominions" of a country are synonymous with the land which forms its territory, or whether the term is to be extended so as to cover, at any rate for certain purposes, what are called "territorial waters." A long series of writers had repeated the assertion that every country has jurisdiction over the sea which washes its coasts, to a distance from the shore which they generally agreed in fixing at a marine league, but the proposition had never been so thoroughly discussed as it was two years ago in the Court for Crown Cases reserved. The question before the Court was whether a German subject could be tried for manslaughter in England, for having so negligently navigated a German vessel as to have run down a British vessel, thereby causing death, within three miles of the English coast. The point was twice argued, the second time before fourteen judges, and judgment was delivered on November 13, 1876. The Court demanded proof of the alleged rule of International Law as to the three-mile limit, and was indisposed to accept as conclusive the dicta of continental jurists upon the subject. It is indeed notorious that the claims made by the great maritime nations in the seventeenth century were to an extent of sea far beyond three miles. Grotius was perhaps the first to narrow the claim to such an extent of water as can be controlled from the

neighbouring shore[1], the measure of which extent was first stated by Bynkershoek to be the range of cannon[2]. The judges nearly all inclined to the belief that International Law now allows a nation to exercise jurisdiction over its territorial waters as thus defined; but a majority of them decided the case upon the narrow ground that such a jurisdiction could not be shown to have been undertaken by the common law of England, and must therefore be expressly assumed by Act of Parliament before it can be exercised by the Courts[3]. A Bill has accordingly been introduced by the Lord Chancellor which recites that "the "rightful jurisdiction of Her Majesty, her heirs and suc- "cessors, extends, and always has extended, over the open "seas adjacent to the coasts of the United Kingdom and all "other parts of Her Majesty's dominions, to such a distance "as is necessary for the defence and security of such "dominions"; and enacts that "an offence committed by "a person, whether he is or is not a subject of Her Majesty, "on the open sea, within the 'territorial waters'" (explained to mean the sea within one marine league from low-water mark) "of Her Majesty's dominions, is an offence within the "jurisdiction of the Admiral, although it may have been "committed on board, or by means of, a foreign ship[4]."

The general right of jurisdiction enjoyed by a nation within its territory is subject to certain exceptions, the rules relating to which are the doctrine of "extraterritoriality[5]."

No application of this doctrine is better established than that which relates to "public ships." Writers on International Law lay down in the broadest terms that

[1] *De I. B. et P.* ii. c. 2. § 13. [2] *De Dom. Maris* (1702).

[3] *R.* v. *Keyn*, L. R. 2 Ex. Div. 63.

[4] The Bill became law as the Territorial Waters Jurisdiction Act, 1878.

[5] As Baldus says: "in quocumque loco est exercitus, ibi fingitur "esse territorium ducis."

these are to be regarded as part of the territory, "floating "fortresses," of the State whose flag they carry[1].

Are we to take this statement absolutely, with all its logical consequences, or is it true only subject to reservations? This was the question which two years ago was very fully considered by a Royal Commission. The circumstances which led to the appointment of that Commission are doubtless fresh in your memory. In August, 1875, a circular was issued for the guidance of commanders of Her Majesty's ships in dealing with runaway slaves who might claim the protection of the British flag. That circular was much criticized, both inside and outside of Parliament, as being too careful of the interests of slave-owners, and not careful enough of the independence of British men-of-war of the jurisdiction of any Power in whose waters they may happen to find themselves.

In February, 1876, a commission was charged to inquire into the whole question, and it reported in May of the same year. The report itself is satisfied with laying down that "a ship of war entering the waters of a friendly State "is, by the common practice of nations, regarded as "exempt, speaking generally, from the jurisdiction of the "local authorities, and is, at the same time, under an "international obligation, speaking generally, to respect "the local law." Individual commissioners enter more fully into the question, and answer it in different ways. The Lord Chief Justice thinks that the theory of extra-territoriality "has been taken up somewhat hastily, and "on inconclusive authority"; and that "if pushed to "extreme consequences it is likely to lead to inconvenient "and mischievous results." He shows that in 1794 the Attorney-General of the United States reported that "the "commander of a foreign ship of war cannot claim that "exterritoriality which is annexed to a foreign minister

[1] Ortolan, i. p. 189.

"and his domicil; but is conceived to be fully in the "reach of, and amenable to, the usual jurisdiction of "the State where he happens to be." The Lord Chief Justice also cites Lord Stowell as saying in 1820 that he "knew of no such right of protection belonging to the "British flag, and thought that such a pretension is un- "founded in point of principle, is injurious to the rights "of other countries, and is inconsistent with those of our "own. . . . The rights of territory are local, and are "fixed by known and determinate limits. Ships are mere "moveables, and are treated as such in the general prac- "tice of nations. It is true that armed neutralities have "attempted to give them a territorial character, but the "attempt, when made, has always been most perseveringly "resisted and defeated." The Lord Chief Justice accordingly contends that the doctrine is of comparatively modern origin, and is supported only by the authority of one or two "publicists," a class of jurists to whose authority he is "seldom disposed to attribute very much "weight."

Another separate report, signed by Sir R. Phillimore, Mr. Bernard, and Sir H. Maine, is more favourable to the doctrine, and attaches more importance to the support which it receives from the jurists. "Whatever "value," they say, "we may be disposed to assign to "testimony of this kind, it is, for the last half century "at least, substantially unanimous. We do not know of "an instance within this period in which a right has been "conceded, or asserted, to take a person or thing from "on board a ship of war by legal process, without leave "of the officer in command."

The question is an important one, because it may be raised, not only with reference to slavery (an institution now fortunately confined to a few nations, and those almost all at a low level of civilization), but also with reference to political refugees, and even to ordinary criminals.

The balance of authority seems to be in favour of the view which limits the effect of the fiction of the exterritoriality of a public ship to exempting from the local jurisdiction its officers and crew in all matters which concern their relations one to another, and the discipline of the ship.

There is one point on which no conflict of jurisdiction can arise, because it is admitted that the jurisdiction of all nations is concurrent. I mean as against Pirates, those "hostes humani generis." A doubt may however well arise whether or no a given vessel is piratical; and such a question did arise last year with reference to a vessel called the *Huascar*. This ship was a Peruvian man-of-war which on May 6, 1877, mutinied in favour of Don Nicholas Pierola, and forcibly detained several British mail-packets on the high seas. The Peruvian *chargé d'affaires* requested the Government of Chili to seize the ship, should it enter the waters of that State. He said: "If a vessel under such conditions is not "a pirate, I confess I do not know what to term her. "She navigates without a commission from any Govern- "ment, acknowledges no territorial authority, and to "establish more precisely her position, has detained on "the high seas a commercial packet. . . . If such a vessel "is not a pirate, at least she has placed herself completely "outside International right." On May 29 the British Admiral on that station, in command of the *Shah* and the *Amethyst*, engaged the *Huascar* off Pacocha, with the ultimate result of causing her to surrender to her own Government. Thereupon occurred a curious revulsion of feeling. Forgetful that they had themselves proclaimed the ship to be a pirate, the Peruvians became vastly indignant that one of their men-of-war had been attacked in time of peace by the British Admiral. A remonstrance was made to our Government; but after much discussion Lord Derby substantially approved of

the steps which had been taken to bring to a close the independent career of the *Huascar*[1].

A Government has a right not only to exercise jurisdiction over all persons within its territory, but also to see to the good treatment of its subjects when in the territory of a foreign Power; and generally that they sustain no injury.

Can a Government carry this right so far as to insist upon the payment to its subjects of money owed to them by a foreign Government? This question has been mooted with reference to loans to the Ottoman Empire, and Lord Derby, on November 5, 1876, received a deputation from the creditors of that Empire, and explained to them the principles which guide the British Government in such cases. After alluding to several instances of national bankruptcy and repudiation, which had been brought to the notice of the Foreign Office, Lord Derby said:

> In all these cases, our invariable rule has been to give moral and unofficial support when we thought it would be useful, but to avoid committing ourselves to any official demands. I think the principle is a sound one. No doubt we have guaranteed Turkey, but that does not constitute an exceptional circumstance, for we have done the same thing for Greece. The question which really does create difficulty is the language which has been held by some of our public men. I have looked carefully to what has been said by Lords Palmerston, Clarendon, and Russell, and though I do not hesitate to say, with all deference to those eminent men, that I think in some cases they went further in giving a moral support to the Government of Turkey as borrowers than was altogether expedient, yet I do not think they ever held language which could reasonably justify the expectation that the Government would interfere forcibly to compel the payment of any debt in the case of default.

The rights hitherto examined belong to the class described by Jurisprudence as rights *in rem*, available against

[1] *Parl. Papers*, 1877, Peru, No. 1 [c. 1833]. Cf. the affair of the *Vigilante*, *Parl. Papers*, 1874.

all the world independently of any special circumstance. International rights *in personam*, i. e. those available against a given State, arise almost exclusively from international contracts, or treaties. There have at all times been discussions with reference to the true nature of treaties in general, and to the effect to be given to certain treaties in particular. Such discussions have of late been so exceptionally abundant, that I can attempt little more than to enumerate them. We have all been asking—how long a treaty remains binding? what changes in the parties to it, or in surrounding circumstances, will render it obsolete? whether the consent of every contracting party is necessary for its abrogation? Much ingenuity has also been expended in determining the effect of particular Conventions, as for instance of the guarantee of the Ottoman Empire created by the Treaty of Paris and the annexed tripartite treaty, or of the rules which now regulate the navigation of the Bosphorus and Dardanelles by ships of war.

Some difficulties have lately arisen in the working of a class of treaties which are of comparatively modern date, I mean those for the extradition of criminals. The Ashburton Treaty of 1842 with the United States contains an extradition clause, and the necessary authority for carrying it out was given by Act of Parliament. In 1870, however, the whole subject was regulated by a permanent Act, repealing all previous enactments, and containing, amongst other provisions, one to the effect that no person is to be surrendered unless an arrangement has been made that he shall not, until he shall have had an opportunity of returning to H. M.'s dominions, be tried "for any offence committed prior to extradition, "other than the extradition crime." The effect, if any, of this provision upon our obligations to the United States under the treaty of 1842 was brought in question by the case of Lawrence in 1875, and more prominently by that

of Winslow in 1876. Winslow was arrested at the request of the United States for forgery, but as no promise was forthcoming that he should not be tried for any other offence, our Government eventually directed him to be set at liberty. The President thereupon stated in a message, sent to Congress in June, that the treaty would be considered as abrogated in respect of extradition. Later in the year, negotiations were however resumed; and extradition has since been practised, with an understanding, though without any formal promise, that the United States will only try the prisoner for the crime for which he is surrendered[1].

Another question with reference to extradition was raised towards the end of 1877. An Englishman named Wilson was demanded in extradition by Switzerland, on a charge of larceny committed in that country. It was however pointed out that the treaty of 1874, under which the demand was made, provides that the subjects of neither of the contracting Governments "shall be de-"livered up" to the other Government; and the Queen's Bench Division accordingly, on a writ of *habeas corpus*, ordered Wilson to be discharged from custody[2]. No such objection was taken in the case of De Tourville, who, though a British subject, was surrendered on a charge of murdering his wife in the Tyrol; our treaty of 1873 with Austria merely providing that the contracting parties "shall not be obliged to concede the extradition of their "own subjects."

A little controversy was caused the other day by those clauses of the Treaty of Washington which relate to compensation to be awarded to British subjects in respect

[1] *Parl. Papers*, 1876 [c. 1482, 1526], and *Hansard*, Feb. and March, 1877. An express provision to this effect has been inserted in the supplementary Extradition Treaty of 1890, between Great Britain and the United States.

[2] *R.* v. *Wilson*, 3 *Q. B. D.* 42.

of certain fishing privileges granted to subjects of the United States[1]. It is provided that the question of such compensation is to be determined by three arbitrators, but nothing is said as to the necessity of their being unanimous. The award was made in November, 1877, by a majority of the arbitrators appointed, assessing the compensation to be paid by the United States at rather more than £1,000,000. Was the award vitiated by the dissent from it of one of the arbitrators? It is much to the credit of America that this view, though put forward by a certain set of politicians, was at once rejected by the common sense of the nation, and the money was duly paid. It is obvious that where, as in this case, each of two disputants appoints an arbitrator, agreeing to accept, as a third arbitrator, the nominee of some stranger to the controversy, to allow the award to be vitiated whenever the nominee of either disputant is dissatisfied with it would be to reduce the whole proceedings to a farce.

III. We have run rapidly over the more important species of international rights; and now proceed to examine such illustrations as have recently occurred of the mode in which redress is obtained when those rights are violated.

The litigation of nations is war; and the litigant nations are to one another in a state of "Belligerency."

Although the essential characteristics of a proper war, as enumerated by Grotius, include a formal declaration, it is more than two hundred years since a defiance was duly delivered by Heralds-at-arms; and for a century past wars have generally begun without any declaration whatever. It is therefore worth noticing that the Russo-Turkish war was declared in a formal despatch, handed to the Turkish *chargé d'affaires* at St. Petersburg, and

[1] Arts. 22-25.

that a similar declaration was made by France before the commencement of the war with Prussia.

The events of 1877 have, of course, illustrated and tested the received rules for the conduct of warfare. It is to the credit of the Russian Government that, at the commencement of hostilities, it issued a circular to its commanders, directing them to observe the Geneva Convention and the St. Petersburg Declaration, and to comply with the spirit of the principles of the Brussels Conference, with the somewhat sinister reservation "so "far as they are applicable to Turkey, and agree with the "special objects of the present war [1]." The same Government shortly afterwards published for the use of its armies a catechism in which the Brussels principles are stated in a popular form [2]; and subsequently issued a very indulgent *règlement* for the treatment of prisoners of war [3].

It was not till some months later that the Sublime Porte went so far in the same direction as to cause the Geneva Convention to be translated into Turkish; and finding, what ought indeed to have been long foreseen, that the red cross, assigned by that Convention for the protection of hospitals and surgeons, was liable to be mistaken by Mussulman troops for a hostile emblem, substituted for it a red crescent, giving orders at the same time that the red cross should be respected also. It would probably be advisable to substitute hereafter, for both red cross and red crescent, a red star, or other mark less identified with creed or nationality. The theoretical recognition of the maxims by which the cruelty of warfare ought to be tempered has, on both sides, been at least as explicit as in any former war. It is a different question how far those maxims have practically guided the conduct of the respective belligerents.

Without attempting to weigh the evidence by which the

[1] May 12–24, 1877. [2] June 1–13. [3] July 10–12.

Turks and Russians support their mutual recriminations, I will merely remind you of the nature of the charges to which those recriminations relate.

We have heard complaints of the employment of irregular troops, whose excesses are beyond the control of their officers; and we have to consider whether the use of such troops by the Government of a country which is struggling for its existence against an invader is absolutely indefensible. I need hardly say that the employment of Oriental troops is open to no objection on the score of their lack of Christianity, provided always that they are well under the control of European officers.

For the unhappily undeniable slaughter and mutilation of prisoners by the Turks, no mitigating circumstances can of course be pleaded. It was against this practice in particular that certain of the Powers thought fit in August last to address to the Porte a formal remonstrance; calling the attention of the Turkish Government to its obligations under the Geneva Convention. In September the "Institut de Droit International" addressed to the Porte a more elaborate remonstrance to the same effect.

Both belligerents have been charged with deliberately firing upon buildings marked as hospitals by the flag of the red cross or of the red crescent, and the charge has been met, on both sides, by allegations that the flag was being fraudulently used for the protection of troops.

The Russians have been charged with sinking Turkish merchant vessels with all on board by means of torpedoes. This, if established, would be a gross abuse of the rights of war. The Porte had, however, little ground for complaining that some merchant vessels were sunk by Russian cruisers, without being brought in for condemnation. Assuming that there was no neutral property on board these ships, they might rightfully be destroyed without the intervention of a Prize Court[1].

[1] Cf. the *Felicity*, 2 Dods. 381.

Two topics of the law of belligerency have of late been much discussed with reference rather to the future than to the past. First, the abstract advisability of exempting from capture the private property of enemies navigating under an enemy flag. Secondly, the lawfulness of the employment of privateers, which has hardly been sufficiently distinguished from an augmentation of the navy of a given country by the incorporation into it of a certain portion of its mercantile marine.

IV. The recent illustrations of the last, and perhaps the most important, chapter of the System of International Law, that which deals with the rights and duties of States which are not parties to a war, have not been numerous. In June last our Government gave proof of its desire to perform the duties of a neutral Power, as they are now understood, by arresting the *Hamadieh*, an ironclad, which was being built in the Thames for the Ottoman Government.

A curious attempt on the part of a neutral to interfere with the proceedings of a belligerent took place in the same month, when upon the arrival at Corfu of an Austrian Lloyd's vessel carrying Turkish war material, the Greek authorities, at the request of the Russian consul, detained the goods as 'contraband.' The dispute which arose between the Greek and Turkish Governments in consequence of this extraordinary act was compromised by the material being forwarded to Trieste, there to remain during the continuance of the war.

It is an accepted principle that a blockade to be binding must be effective. A novel question has been raised as to the sort of blockade which answers this description. Can Odessa be said to be effectively blockaded, not by a cordon of vessels cruising off that port, but by one or two ships stationed at the Bosphorus, so as to stop all access from the Mediterranean not only to Odessa, but

also to any port on the Black Sea? The claim differs perhaps only in degree from one, which was successfully sustained, to blockade Riga by a force stationed at the Lyser Ort, 120 miles distant.

I have pointed out "summo digito et quasi per indicem," without attempting to discuss them, the various questions which have recently arisen within the province of International Law. My object has been twofold.

In the first place—to call attention to what I venture to think the rational method of studying a science, which has suffered much from a lax and illogical method, borrowed from Klüber by certain well-known American writers, and not improved in the borrowing.

But also—to show that International Law, if not all-powerful, is at any rate everywhere present in modern history.

Morality is not despaired of because it sometimes gives forth an uncertain sound, and sometimes fails to hold men under the strain of a great temptation. It is not reasonable to undervalue the services rendered by International Law, because it is not precise enough to supply a rule for every new case that arises, or strong enough to restrain from collision nations whose passions are once fairly roused.

IX

THE LITERATURE OF INTERNATIONAL LAW IN 1884[1]

If the past year has produced no work of first-rate importance upon International Law, it has at least been fertile in new editions, and in essays upon subdivisions of the subject.

A systematic view of the science is attempted in several works which have been completed, or translated, or have come to a new edition during the year.

The publication of the second and concluding volume of Professor Lorimer's *Institutes of the Law of Nations*[2] preceded only by a few months the appearance at Brussels of an abridged translation of the whole work by M. Nys[3].

[1] *Law Quarterly Review*, vol. i. p. 100. Cf. Felix Stoerk, *Die Litteratur des Internationalen Rechts*, 1884 *bis* 1894. Leipzig, 1896.

[2] *The Institutes of the Law of Nations, a Treatise on the Jural Relations of separate political Communities*, by James Lorimer, LL.D., Advocate, Regius Professor of Public Law and of the Law of Nature in the University of Edinburgh, &c. In two volumes; vol. ii. Blackwood, Edinburgh and London, 1884.

[3] *Principes de Droit international*, par J. Lorimer, Professeur de droit de la nature et des gens, &c. &c. Traduit de l'Anglais par

"The law of nations," says the learned Edinburgh Professor, "is the law of nature, realized in the relations of "separate political communities." The book is, in fact, an application to the relations of States of the principles set forth by the author, with reference to the relations of individuals, in his *Institutes of Law, a treatise of the principles of Jurisprudence as determined by Nature* (second edition, 1880). If most readers south of the Tweed are likely to hold that such a conception of International Law *pèche par la base*, they will admire and enjoy none the less the lucidity of style, the elevation of sentiment, and the ingenuity of illustration which characterize every page of Mr. Lorimer's writings. The fullest recognition of the existence of these qualities must not, however, prevent us from disagreeing not only with Mr. Lorimer's conception of his subject, but also with his treatment of it in detail. Of his three grand divisions of International Law, viz. "public," "public and private," and "private," we can acknowledge the claim only of the first mentioned to be International Law at all, though he has of course ample continental authority for including under the term what is more accurately described as "the Conflict of Laws," and for devoting a hundred pages of the first volume to its discussion. The second volume, with which alone we are directly concerned, deals with those relations of nations which are "abnormal," as being "at variance with the "general scheme of the universe," i. e. principally with War and Neutrality. Neutrality is declared to be a jural relation only when Intervention is impossible, and the Neutrality of States is maintained not to involve that of their subjects, who should therefore be relieved from the restrictions imposed by Foreign Enlistment Acts. With p. 182 ends the systematic portion of the volume, the

Ernest Nys, Associé de l'Institut de Droit International, juge au tribunal de 1re instance de Bruxelles. Bruxelles, Merzbach et Falk, 1884.

remainder of which is occupied by a scheme for the establishment of an "International Government," and by a very full appendix of Acts of Parliament and other documents.

At the opposite pole from Professor Lorimer's interesting speculations is the admirable treatise of Mr. W. E. Hall[1], according to whose profession of faith, "Existing rules are "the sole standard of conduct or law of present authority; "and changes and improvements in those rules can only "be effected through the same means by which they were "originally formed, namely by growth in harmony with "changes in the sentiments and external conditions of the "body of States." The original work, as published in 1880, deserved its rapid success by the clearness of its arrangement of the ascertainable rules of the positive law of Nations. In the new edition the author has utilized the space gained by the omission of several documents, which it is too much the custom to reprint in every work of the kind, to expand certain topics, especially that of embassy, which had previously received less attention than others.

Sir Travers Twiss must have found it necessary almost to rewrite the second edition of the first volume of his *Law of Nations*[2], so complete has been the metamorphosis of the political framework of Europe since the appearance of the first edition in 1861. This volume, which is concerned with "the rights and duties of nations in time of "peace," is not an exhaustive exposition of that subject. It consists rather of a series of valuable essays on the leading topics of the law of peace; such as the "incidents "and modifications of national life"; "national State-"systems of Christendom"; "the Ottoman Empire";

[1] *A Treatise on International Law*, by W. E. Hall, M.A., Barrister-at-Law. Oxford, Second Edition, Clarendon Press, 1884.

[2] *The Law of Nations considered as independent political Communities.* On the Rights and Duties of Nations in time of Peace. By Sir Travers Twiss, D.C.L., F.R.S., Member of the Institute of International Law, and one of H.M. Counsel. A new edition, revised and enlarged. Oxford, at the Clarendon Press, 1884.

"Right of Self-preservation"; "Right of the Sea"; "Right of Legation." An entirely new chapter is added on the Capitulations of the Ottoman Empire. The work contains much which may be vainly sought elsewhere. The information is pleasantly conveyed, and the reader feels throughout that he has to do with one who is not merely a man of books, but who has also enjoyed a long experience in the Courts and in public affairs.

Mr. Miller's volume of *Lectures on the Philosophy of Law*[1], in which the author shows himself an apt pupil of Professor Lorimer, would not be mentioned here were it not stated to be "designed mainly as an introduction to "the study of International Law." It is not to be recommended for this purpose.

Some good chapters in Mr. Wharton's *Commentaries on Law* (pp. 184-403) are devoted to "Public International "Law," and "Private International Law[2]."

Mr. J. H. Ferguson has published at the Hague and at Hong-Kong the first volume of a *Manual of International Law*[3].

The second volumes of the *Teorica del Diritto Internazionale* of Professor Macri of Catania, and of the *Traité de Droit International*, translated from the Russian of Professor de Martens of St. Petersburg, should have appeared before the end of the year. A systematic treatise by Professor Bulmerincq of Heidelberg may be shortly expected, and Professor Holtzendorff of Munich is pre-

[1] *Lectures on the Philosophy of Law*, designed mainly as an introduction to the Study of International Law, by William Galbraith Miller, M.A., LL.B., Lecturer on Public Law, &c., in the University of Glasgow. London, C. Griffin & Co., 1884.

[2] *Commentaries on Law, &c. &c.*, by Francis Wharton, LL.D., Member of the Institute of International Law, &c. Philadelphia, Kay and Brother, 1884.

[3] *Manual of International Law*, for the use of Navies, Colonies, and Consulates, by Jan. Helenus Ferguson, Minister of the Netherlands in China, &c.; t. i. La Haye, Nyhoff; Hong-Kong, Noronha, 1884.

paring an extensive work to be carried out by the co-operation of a number of jurists.

The History and Antiquities of International Law have been illustrated by *Les Origines de la Diplomatie jusqu'à Grotius* of M. Nys[1], who has already done such good service in the same direction by his *Droit de la guerre et les précurseurs de Grotius*, 1882, and his edition of the *Arbre des batailles* of Honoré Bonet, 1883. Much light has been thrown upon the early bibliography of the law of Embassy by M. Nys, who seems indeed to have a peculiar aptitude for identifying hitherto untracked personalities.

Count Aurelio Saffi has translated into Italian, with notes and some additional matter, a lecture upon Albericus Gentilis by the writer of this article[2].

Professor Fusinato of Macerata has produced a very learned quarto, *Dei feziali e del diritto feziale*, the character of which is sufficiently guaranteed by its appearing in the Transactions of the Lincei[3].

An elaborate monograph on the Abate Galiani by Professor Pierantoni of Rome is near completion, and Dr. Vladimir Pappafava, of Zara, in Dalmatia, is compiling a critical bibliography of the works upon International Law, both public and private, which have been published from the earliest times to the present day.

A number of isolated topics belonging to the law of

[1] *Les origines de la diplomatie et le droit d'ambassade jusqu'à Grotius*, par Ernest Nys, juge au tribunal de 1re instance de Bruxelles, Associé de l'Institut de Droit International. Bruxelles, Merzbach et Falk, 1884.

[2] *Alberico Gentili*, discorso inaugurale letto in Oxford dall' avv. Thomaso Erskine Holland, Professore, &c., tradotto da Aurelio Saffi. Roma, Loescher & Co., 1884.

[3] *Dei feziali e del diritto feziale*, contributo alla storia del diritto publico esterno di Roma, memoria del dott. Guido Fusinato. Roma, coi tipi Salviucci, 1884.

nations in time of peace have been touched upon by various writers. In his inaugural lecture at Macerata[1], Professor Fusinato has dealt judiciously with a subject which is not easily so dealt with in Italy, that of Nationality. Professor Olivi of Padua has written on the immunity of ambassadors[2]. M. Rolin-Jaequemyns has printed an important speech, delivered by him in the Belgian Chamber, on diplomatic representation at the Vatican[3]. Extradition has been discussed by Professors von Bar[4] of Göttingen and Lammasch of Vienna[5].

Sir Sherston Baker has produced an exhaustive monograph upon the now almost forgotten office of Vice-Admiral of the Coast[6]. M. Perels has produced a Handbook of the Maritime Law of the German Empire[7]. The navigation of rivers, and especially of the Danube with reference to the rights of Roumania, which gave rise to so large a crop of literature in the preceding year, is the subject of a tract by Dr. Theodor von Bunsen, in von Holtzendorff's admirable series of Zeit- und Streit-Fragen[8],

[1] Dott. Guido Fusinato, *Il principio della scuola italiana nel diritto internazionale pubblico, prolusione*, &c. Macerata, tip. Bianchini, 1884.

[2] *Dell' indipendenza dell' inviato diplomatico e della sua immunità nelle materie civili*, memoria del Professore Olivi. Modena, 1884.

[3] *Rétablissement des relations diplomatiques entre la Belgique et le Vatican*, Discours prononcé par M. Rolin-Jaequemyns à la chambre des représentants de Belgique, le 7 Août, 1884. Bruxelles, P. Weissenbruch, 1884.

[4] *Zur Lehre von der Auslieferung:* reprinted from the *Gerichtssaal*, Bd. xxxiv.

[5] *Das Recht der Auslieferung wegen politischer Verbrechen.* Wien, 1884.

[6] The Office of Vice-Admiral of the Coast, being some account of that ancient office, by Sir Sherston Baker, Bart., Barrister-at-Law, Associate of the Institute of International Law, &c. London, privately printed, 1884.

[7] *Handbuch des allgemeinen öffentlichen Seerechts im Deutschen Reiche.* Berlin, Miller, 1884.

[8] *Die Donau*, von Dr. Theodor von Bunsen. Berlin, C. Habel, 1884.

and of another by Dr. Jellinek[1]. Professor Lawrence, of Cambridge, has published six well-written essays[2], with reference mainly to questions of contemporary interest, such as the Suez and Panama canals, in discussing which he has shown considerable power of disentangling complicated diplomatic discussions. Roumania, in the person of M. Tanoviceano, has produced an international jurist of no small merit. His treatise *De l'Intervention*[3] is the best book upon the subject.

The literature of the law of war has been less copious than that of the law of peace. Captain Guelle has published the first volume of a *Précis des Lois de la Guerre sur Terre*, with a preface by M. Pradier-Fodéré[4]. Sir T. Twiss has written a pamphlet on maritime law since the Declaration of Paris[5]. Col. Maurice has prepared for the Quarter-Master-General's Department an account of Hostilities commenced (1700–1870) without a Declaration of War[6]. M. Negrin has translated into Spanish with annotations the Oxford *Manuel des lois de la guerre sur terre*[7], which had indeed already been translated into

[1] *Oesterreich-Ungarn und Rumänien in der Donaufrage.* Wien, Hölder, 1884.

[2] *Essays on some disputed questions of Modern International Law*, by T. J. Lawrence, M.A., LL.M., Deputy Whewell Professor of International Law, &c. Cambridge, Deighton, Bell & Co., 1884.

[3] *De l'intervention au point de vue du Droit international*, par Jean Tanoviceano. Paris, Larose et Forcel, 1884.

[4] *Précis des Lois de la Guerre sur Terre*, par Jules Guelle, Capitaine, Professeur adjoint à l'école spéciale militaire de St.-Cyr, avec une préface de M. Pradier-Fodéré. Tome i. Paris, Pedone-Lauriel, 1884.

[5] *Belligerent Right on the High Seas since the Declaration of Paris* (1856), by Sir Travers Twiss, D.C.L., &c. &c. London, Butterworths, 1884.

[6] *Hostilities commenced without Declaration* (1700–1870), prepared for the Quarter-Master-General's Department, by Col. Maurice, R.A. London, Clowes & Son, 1884.

[7] *Manual de las Leyes de la guerra continental*, publicado por el Instituto de derecho internacional, votado en la sesion plena de

Spanish by M. Leguizamon, of Buenos-Ayres, as it has been into most other languages, including Chinese.

The law of Neutrality has been illustrated by Dr. Bergbohm of Dorpat. His essay upon the Armed Neutrality of 1780[1] deals with its secret history, and with its effect upon the development of maritime law.

It would be in accordance with continental practice if this article contained some account of the recent literature of the so-called "Private International Law." Any mention of this literature has, however, been designedly omitted, in order to emphasize the opinion of the writer that it does not deal with international law at all.

On the other hand, no such estimate of the past year as has here been attempted would be complete which did not contain grateful reference to the periodicals especially devoted to the interests of the science, and to the standard collections of diplomatic acts. The *Revue de Droit International*, under the able editorship-in-chief of M. Rivier, has well maintained its high reputation by the contents of its sixteenth volume; and M. Clunet's *Revue de Droit International Privé*, which contains much that bears upon International Law properly so called, has creditably reached its eleventh year. The *Archives Diplomatiques*, founded in 1861, and now admirably edited by Professor Renault, is a storehouse of information; and the ninth volume of the second series of the *Nouveau Recueil Général de Traités* of Martens, now edited by M. Jules Hopf, is as indispensable as any one of its sixty predecessors.

Oxford, &c. Traducido con notas por D. Ignacio de Negrin, intendente de Marina. Madrid, 1884.

[1] *Die bewaffnete Neutralität*, 1780–83. *Eine Entwickelungsphase des Völkerrechts im Seekriege*, von Carl Bergbohm. Berlin, 1884.

X

INTERNATIONAL LAW AND ACTS OF PARLIAMENT[1]

THE whole question of the relation of National to International Law has been much misunderstood, and is indeed not free from difficulty. I propose to-day to confine myself to one branch of this question, asking your attention only to the points of contact between International Law and the Statute Law of England.

For the purposes of our present inquiry the relevant Acts of Parliament might, of course, be taken in their chronological order (and they occur from Magna Charta through most reigns down to the present time); or, adopting the division of topics now usual in treatises on the Law of Nations, we might cite, under each topic, the Statutes which bear upon it; or again, we might distinguish Acts consciously passed with a view to rules of International Law from those the effect of which upon such rules is, as it were, fortuitous.

[1] A Lecture delivered in 1893. *Law Quarterly Review*, vol. ix. p. 136. Translated into German by Dr. W. Pappenheim in the *Zeitschrift für internationales Privat- und Strafrecht* for 1894.

But it will, I think, be more useful to divide the enactments which we are about to consider, in the first place, into two groups, viz. those which

I. Assert national rights, which may turn out to be internationally controvertible.

II. Provide for the performance of national duties, the conception of which may, perhaps, from an international point of view, be criticized as inadequate.

Legislation of either kind must be vigilantly watched, lest it lead us into diplomatic difficulties. Excess in assertion of Right, and defect in recognition of Duty, may alike prove a *casus belli*.

I. Enactments asserting Rights.

1. The right which every State has to exist in safety implies a right of regulating the conditions upon which aliens are admitted to, or allowed to remain upon, its territory.

The restrictions imposed by Statute Law upon the arrival of aliens in the United Kingdom (a topic just now of much practical interest) amount to little more than a machinery for obtaining statistics of immigration.

By 6 & 7 Wm. IV. c. 11 (superseding 7 Geo. IV. c. 54) it is provided that the master of any vessel arriving in this realm from foreign parts shall make a declaration to the customs officer as to the names, rank, occupation and description of all aliens on board of, or who shall have landed from, his ship. Each alien is also to make a declaration, and to receive in exchange a certificate: copies of the declaration and certificate to be forwarded to a Secretary of State. Foreign Ministers, &c., are excepted from the operation of the Act, which, after having become almost a dead letter, is now being put in force, but apparently with much laxity; the duty of

so doing being often entrusted, according to a statement made on Saturday last in the House of Commons, to "the ship's carpenter's boy[1]."

The legislation of almost every other civilized country upon this subject is far more stringent; as is the case in some of our own colonies. Thus by the Victorian Chinese Act, 1881, a Chinese immigrant may not land till £10 has been paid for him, and a limit is placed upon the number of Chinese who may be brought in one vessel[2].

The expulsion of aliens, perhaps never effected by the Royal prerogative[3], has since 33 Geo. III. c. 4 been authorized by temporary Acts of Parliament; such as 11 & 12 Vict. c. 20 (1848), which recites that "it is ex-"pedient, for the due security of the peace and tranquillity "of this realm, that provision should be made, for a time "to be limited, respecting aliens arriving, or resident, in "this kingdom"; and proceeds to empower a Secretary of State, on information, to order the removal of any alien or aliens, within a year from the passing of the Act and to the end of the next Session of Parliament.

By the Prevention of Crimes (Ireland) Act, 1882 (45 & 46 Vict. c. 25), sec. 15, the 11 & 12 Vict. c. 20 was re-enacted for the United Kingdom, to continue in force for the same period as the principal Act[4].

It is hardly necessary to call attention to the numerous Acts by which aliens have been disabled from exercising

[1] See Stat. Law Rev. Act, 1874, 47 & 48 Vict. c. 43, sec. 4; *Parl. Rep. on Aliens*, 1843, p. ix; C. Booth, *Life and Labour in East London*, vol. i. p. 551 (cited 6 *L. Q. R.* p. 39); and the debate in the House of Commons on Feb. 11, 1893.

[2] See *Musgrove* v. *Chun Teeong Toy*, '91, App. Ca. 272, where the Privy Council expressed an opinion that, apart from the Act, an alien may be prohibited by the prerogative of the Crown from landing on British territory, although diplomatic representations might follow. Cf. 6 *L. Q. R.* 27, especially a list of enactments restricting Chinese immigration, at p. 41; also 7 *L. Q. R.* 299.

[3] See, however, *L. Q. R.* vol xiii. p. 165.

[4] Cf. the early Acts for the discouragement of alien artificers,

functions of a political character, from holding land, and from owning a British ship; or to the, now mainly obsolete, Navigation Acts, by which the colonial and coasting trades were closed to foreign vessels[1].

On none of these points are we likely to be in conflict with other Powers; and it might be supposed that the rights of excluding and of expelling aliens were equally unquestionable. This is, however, not the prevalent view among continental jurists, as sufficiently appears from certain resolutions carried at the Geneva meeting of the "Institut de Droit International" in September, 1892, by large majorities against those members who maintained that International Law imposes here no limits to the discretion of the several Governments[2].

2. The right of this country to the allegiance of its subjects is asserted by two groups of statutes, in a way that might easily lead to friction, in cases where the same persons are also claimed as subjects by other States.

The old Common Law doctrine, that all persons born within the Queen's dominions are British subjects, is re-affirmed by the Naturalization Act, 1870, but with important relaxations, practically abolishing another common law rule, expressed in the maxim "nemo potest "exuere patriam suam." In the first place, any person so born, who was also at his birth the subject of some foreign State, can terminate his British allegiance, by making, when of full age, a declaration of alienage; and, what is more important, any British subject who may voluntarily become naturalized in a foreign State, there-

1 Ric. III. c. 9; 21 Hen. VIII. c. 16; 32 Hen. VIII. c. 16. A Commission based upon them was issued by James I. Cf. 6 *L. Q. R.* 27.

[1] By 16 & 17 Vict. c. 107, secs. 324-326, and 39 & 40 Vict. c. 36, sec. 140, where reciprocity is not granted, restrictions may still be imposed on these trades. As to alien clergy, see 27 Eliz. c. 2; 1 Jac. I. c. 4; 10 Geo. IV. c. 7, secs. 28-38.

[2] See the *Annuaire de l'Institut*, t. viii. p. 166; t. x. p. 227; t. xi. p. 273; t. xii. p. 184.

upon ceases (speaking generally) to retain his British nationality.

On the other hand, the old statutory provisions, imposing the quality of British subject upon the children and grandchildren born out of Her Majesty's dominions of British subjects, viz. 25 Ed. III. st. 1; 7 Anne, c. 5, sec. 3; 4 Geo. II. c. 21, sec. 1; 13 Geo. III. c. 21, are still in force, subject to rights of renunciation, or of obtaining foreign naturalization, under the Act of 1870[1].

3. A nation's ownership of its territory, properly so called, is too indisputable to need affirmation by Act of Parliament; but we find statutory provisions which imply something very like a limited right of ownership in what are called "territorial waters."

So much can perhaps hardly be inferred from the phrase in the Foreign Enlistment Act which includes "adjacent territorial waters" in the "dominions" of Her Majesty, but several Acts confirmatory of special Conventions, e.g. 59 Geo. III. c. 38 (as to British America), 31 & 32 Vict. c. 45 (as to the Channel), and 46 & 47 Vict. c. 22 (as to the North Sea Convention), allow any British boats to fish within British territorial waters; and the last-mentioned Act gives a generally available definition of the term: "exclusive fishery limits of the British islands[2]."

The 21 & 22 Vict. c. 109 declares that, as between the Queen and the Prince of Wales, "all mines and minerals "lying below low-water mark, under the open sea, adjacent "to but not being part of the county of Cornwall, are "vested in Her Majesty the Queen in right of her crown, "as part of the soil and territorial possessions of the "Crown."

A bay, the opening of which is twenty miles broad, as is the case with the Bay of Conception in Newfoundland,

[1] Cf. the Naturalization Act, 1895.

[2] The Convention, incorporated in the Act, fixes the limit at three miles, and for bays at ten.

is not usually supposed to be wholly territorial, but in *The Direct United States Cable Co.* v. *Anglo-American Telegraph Co.* it was held that 59 Geo. III. c. 38 (passed mainly to carry out the Convention of 1818) was such an assertion of British dominion over that Bay as (with 35 & 36 Vict. c. 45, authorizing Newfoundland to legislate with regard to it) could not be gainsaid in a British court. The Privy Council doubted as to the International Law on the subject[1].

4. The right of the British Crown to exclusive sovereignty and jurisdiction within the realm is asserted by the early Acts against papal encroachments and by the Ecclesiastical Titles Act, 1851[2]. Also by the bulk of our criminal law, which contains no exceptions in favour of aliens, as to offences committed on land within the British dominions, or on board of British ships upon the high seas. Our Government had lately occasion to remind that of the United States of the necessary applicability of the "Coercion Acts" to American citizens who might happen to be in Ireland.

A claim to jurisdiction, growing out of past employment in a British ship, which one might suppose would prove internationally untenable, is contained in sec. 267 of the Merchant Shipping Act, 1854, viz. that "all offences "against property or person, committed *at any place*, "either ashore or afloat, out of Her Majesty's dominions, "by *any* . . . seaman, who, at the time when the offence "is committed, is, *or within three months previously* has "been, employed in any British ship, shall be" (in effect) triable as if committed within the jurisdiction of the Admiralty of England[3].

[1] L. R. 2 App. Ca. 394.

[2] 14 & 15 Vict. c. 60, repealed 1871, but with a recital that no pre-eminence or coercive jurisdiction can be conferred otherwise than by the Crown, and according to the laws of the realm.

[3] Re-enacted as sec. 687 of the Merchant Shipping Act, 1894 57 & 58 Vict. c. 60.

Three extensions of this right are deserving of attention :—

i. For many purposes the British Crown claims to exercise jurisdiction over aliens and alien vessels, not only within its dominions, but also within the waters which wash the coasts of its dominions, to a distance of three miles from low-water mark. I have already mentioned that something very like a right of ownership in those waters is asserted by the claim to exclusive fishery therein.

A less questionable right, viz. one of jurisdiction, is asserted over these waters for the following purposes, viz.: (1) the prohibition of hostilities; (2) the enforcement of quarantine; (3) the prevention of smuggling; (4) the police of fisheries; and (5) the application to even passing vessels of English criminal law.

(1) The principle under which a neutral State prohibits the occurrence of hostilities within three miles of its coasts is clearly laid down in the Foreign Enlistment Act, 1870.

(2) By 6 Geo. IV. c. 78, and subsequent Acts, any vessel on arriving within even six miles of the coasts of the United Kingdom is obliged to display a signal denoting its sanitary condition, and men-of-war may oblige an infected vessel to repair to a port appointed for the performance of quarantine, if necessary, "by firing guns "upon such vessel" (cf. 30 & 31 Vict. c. 101, sec. 56, and 38 & 39 Vict. c. 55, sec. 343, &c.).

(3) For the prevention of smuggling, the repealed Hovering Act, 9 Geo. II. c. 35 (1736), sec. 22, assumed a revenue jurisdiction of four leagues from the coast, by prohibiting the transhipment of foreign goods within that distance. It has, however, been supposed in more recent times that so extensive a jurisdiction could not be asserted with reference to any foreign ship the Government of whose country chose to object to its exercise; and in the

Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), sec. 179, the claim of jurisdiction, as against foreign vessels and foreigners, is limited to a distance of one league from the coast[1].

Somewhat analogous to the Hovering Acts was 56 Geo. III. c. 23, "An Act for regulating the intercourse "with the island of St. Helena, &c." (1816), which recites the necessity of prohibiting all communication with the island, either by Her Majesty's subjects or any other persons, except, &c.; and enacts that, while Buonaparte is detained there, no ship, though belonging to foreigners, may be found hovering within eight leagues of the coast thereof, on pain of forfeiture, should it not depart after being warned.

The United States have lately recalled attention to this Act, as a precedent for their own legislation with reference to the Behring Sea. It may be sufficient to point out that the British Act threw no impediment in the way of ships pursuing their lawful voyage through the waters in the neighbourhood of St. Helena, but was directed, under most exceptional circumstances, solely against vessels loitering with an apparent intent to interfere with a matter which was regarded as of almost international concern, and in which England was acting as the mandatory of the European Powers. Whether the statute would have been enforced in any case in which the United States had thought fit to protest against its application, it is not easy to say.

(4) A claim to exercise a police supervision over fisheries carried on in British waters is included, *a fortiori*, in the claim, already considered, of an exclusive right to fish in those waters. In so far as under two Acts of Parliament, 28 & 29 Vict. c. 22, sec. 2, and 45 & 46 Vict. c. 7, sec. 5, to which also the United States have obligingly recalled our attention, a police superintendence is asserted over an

[1] Cf. *Le Louis*, 2 Dods. 244; *Church* v. *Hubbard*, 2 Cranch, 187.

extent of sea off the North of Scotland considerably in excess of the three mile limit, we can only say that the powers given by these Acts would be judicially interpreted, upon the principles to be presently mentioned, so as not to apply to the boats of foreigners[1].

The 48 & 49 Vict. c. 60, "An Act to constitute a federal "council for Australia," sec. 15, gives power to the Council to legislate as to: "(*c*) Fisheries in Australian "waters beyond territorial limits"; but bills exercising this power are to be reserved for the signification of Her Majesty's pleasure. An Act was accordingly made, 51 Vict. No. 1, to which the Queen's assent was given, extending to Australian waters beyond the territorial jurisdiction of the colony of Queensland, certain provisions of the Queensland Acts relating to the pearl fishery. A similar Act was passed in the following year with reference to the extra-territorial waters of Western Australia. The United States cite these Acts in the Behring Sea controversy; but it must be remarked that the recital in each case refers to such provisions only of the colonial Acts as are "applicable to extra-"territorial waters," and the operation of 51 Vict. No. 1 is expressly limited to British vessels.

(5) Till the year 1878 it was doubtful whether the jurisdiction of English courts extended, and whether the criminal law of England was applicable, to offences committed on board, or by means of, a foreign ship, being at the time on the open sea within three miles from the coast; and although the question is now settled, so far as it can be, by the legislature of this country, it still remains open as a question of International Law.

[1] The Act 28 & 29 Vict. c. 22, sec. 2 specifies: "Between the points "of Ardnamurchan on the north and the mull of Galloway on the "south"; and empowers the making of similar rules to operate "within any other limits of locality on the coasts of Scotland." Cf. 45 & 46 Vict. c. 78, sec. 5.

It is true that the Foreign Enlistment Act, in dealing with offences against its provisions within "territorial "waters," makes no exception in favour of aliens or of foreign vessels, but this Act was passed with special reference to the performance of certain international duties; and the applicability of English criminal law generally to foreign vessels in territorial waters was debated for the first time in the case of *Reg.* v. *Keyn*, when the German captain of a German vessel was tried for causing, by his negligent navigation, when less than three miles from the English coast, the loss of a vessel with which he came into collision, and thereby the death of a passenger on board of her. In this case the Court for Crown Cases Reserved, in November, 1876, quashed the indictment, on the ground that whether or no a State has by International Law a right to extend its criminal jurisdiction over the high seas within three miles of its coasts, this country, at all events, had never done so[1].

The Territorial Waters Jurisdiction Act, 1878, was the result of the decision in this celebrated case. Under certain safeguards it confers jurisdiction upon British courts in respect of any offence committed within three miles of the coasts of Her Majesty's dominions, although committed on board, or by means of, a foreign ship. This Act has been much criticized, and the assertion of jurisdiction which it contains is said by many, and especially by German authorities, to be in contravention of International Law[2].

ii. The jurisdiction of Great Britain, as of other Christian States, is exercisable within the territory of the Ottoman empire, by virtue of special concessions, usually described as "capitulations," and within the territories of

[1] *L. R.* 2 Ex. D. 63. See also supra, p. 155.

[2] E. g. Perels, *Das internationale öffentliche Seerecht der Gegenwart*, 1882, sec. 13.

other Oriental powers such as China, Japan, and Siam, by virtue of similar grants.

The exercise of the jurisdiction thus conceded has been provided for by a series of Acts of Parliament, beginning in 1843, but now superseded by the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), which recites that "by "treaty, capitulation, grant, usage, sufferance, and other "lawful means, Her Majesty the Queen has jurisdiction "within divers foreign countries," and enacts that such jurisdiction may be exercised "in the same and as ample "a manner as if Her Majesty had acquired that jurisdic- "tion by the cession or conquest of territory [1]."

iii. There are also various Acts which confer upon Her Majesty jurisdiction over British subjects in countries where there is no civilized government. For instance, 24 & 25 Vict. c. 31, and 34 and 35 Vict. c. 8, with reference to places in West Africa adjacent to Sierra Leone; 26 & 27 Vict. c. 35, as to territories in South Africa, southward of the 25th degree of S. latitude, and not within the jurisdiction of any civilized government; 35 & 36 Vict. c. 19, sec. 19, and 38 & 39 Vict. c. 51, secs. 4, 5, as to islands in the Pacific. And there is now a general provision upon the subject in sec. 2 of the Foreign Jurisdiction Act, 1890, already mentioned.

An Order in Council of May 9, 1891, reciting that certain territories in South Africa are "under the protection of "Her Majesty the Queen," and that "by treaty, grant, "usage, sufferance, and other lawful means, Her Majesty "has power and jurisdiction in the said territories," proceeds, "by virtue of, and in exercise of the powers by the

[1] By "capitulations," &c., one Western State can acquire no jurisdiction over the subjects of another Western State, except by their voluntary submission to it. The *Laconia*, 2 Moo., P. C. N. S. 161. In disputes in Oriental countries "actor sequitur forum rei" (the plaintiff thus submits himself to the consular jurisdiction of the defendant). But such cases are usually tried by mixed tribunals; cf. Lawrence, *Commentaire sur Wheaton*, t. iv. p. 163; Halleck, i. p. 344.

"Foreign Jurisdiction Act, 1890, *or otherwise*, in Her "Majesty vested," to empower the High Commissioner accordingly. Our Government assumes that it has the right, in Protectorates, to exercise jurisdiction over subjects of outside States, the consent of which is presumed.

II. Enactments in aid of the Performance of Duties.

We have next to consider legislation which strengthens the hands of our Government for the performance of its international duties. These may either exist apart from treaty, or may arise from treaty.

i. In support of duties existing apart from treaty. One of the most important statutes of this kind is the 7 Anne, c. 12, with reference to the privileges of Ambassadors. Its history is curious.

On July 21, 1708, the Russian minister, Matueof, was arrested for debt in the city of London, dragged from his coach, and committed to a spunging-house. The persons concerned were on July 25 examined before the Privy Council (of which Holt C. J. was at the same time sworn a member), and seventeen of them were sent to prison. Most of these were proceeded against in the Queen's Bench on the information of the Attorney-General. They were tried before Holt, February 14, 1708–9, and convicted by the jury. The point of law as to the character of their offence was reserved, but never argued. A Bill dealing with the question was already under discussion in the House of Commons[1], but as read a first time, February 2, 1708–9, was not satisfactory to the *corps diplomatique*. They wished definite penalties to be prescribed by the Bill, and founded "sur les principes du "droit des gens, dont on n'y fait point mention." They

[1] Leave was given for its introduction, Dec. 23, 1708.

proceed: "Il importe donc d'ajouter aux mots: 'to "prevent similar acts of violence for the future,' les "mots, 'Contraires au droit des gens et aux priviléges "accordés de tout temps aux Ambassadeurs et autres "ministres publics, reconnus et autorisés comme tels, "ainsi qu'à ceux des rois ou reines de la Grande Bretagne "dans les cours étrangères'[1]." Words to this effect were accordingly inserted in the preamble, though not, as suggested, in the enacting part of the Bill, before it received the royal assent on April 21, 1709. The Czar, Peter the Great, who had at first demanded that the punishment of death should be instantly inflicted upon the offenders, was appeased by receiving from the hands of an ambassador extraordinary an elegantly illuminated copy of the Act of Parliament, accompanied by an explanatory letter from Queen Anne.

Ambassadors are exempted from the payment of land-tax by 38 Geo. III. c. 5, sec. 46, and there are private Acts upon the subject.

Though it can hardly be said to be an international duty, in the strict sense of the term, to maintain diplomatic intercourse with any given State, yet the refusal to do so is no doubt unfriendly. We may therefore take notice here of the Act (11 & 12 Vict. c. 108) passed in 1848 to remove any statutory difficulties in the way of such intercourse between Her Majesty and "the Sovereign of "the Roman States." The Pope being no longer a temporal Sovereign, this Act was treated as "spent," and repealed by the Statute Law Revision Act of 1875.

By the Offences against the person Act, 24 & 25 Vict. c. 100, sec. 4, "all persons who shall conspire, &c., to "murder any person, whether he be a subject of Her "Majesty or not, and whether he be within the Queen's "dominions or not, and whosoever shall solicit, &c., any "person to murder any other person, whether he be

[1] Martens, *Causes Célèbres*, i. 73.

"a subject of Her Majesty or not, and whether he be "within the Queen's dominions or not, shall be guilty of "a misdemeanour." Under this Act a conspiracy by a foreigner to assassinate a foreign sovereign could be dealt with, which was doubtful when in 1858 Dr. Bernard was tried, under 9 Geo. IV. c. 31, as accessory before the fact to the murders caused by the shell thrown by Orsini at Paris.

Certain Acts of Parliament have been passed to facilitate the performance by this country of international duties which arise only in time of war. Thus the treatment of enemy subjects, found within the realm on the outbreak of hostilities, is provided for by a well-known clause of Magna Charta (25 Ed. I. art. 30, confirming 9 Hen. III), which is still in force. This clause provides also for the treatment of aliens in time of peace.

Breach of truce and safe-conduct was punished by 2 Hen. V. st. 1, c. 6.

With reference to the conduct of actual warfare: The Army Act, 1881 (44 & 45 Vict. c. 58), consolidating former Acts, sec. 6 (1), treats as an offender any person subject to martial law who—

> (*f*) does violence to any person bringing provisions or supplies to the forces; or commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving;
>
> Or (*g*) breaks into any house or other place in search of plunder.

The Naval Discipline Act, 1866, sec. 40, prohibits ill treatment of the officers and crew of a Prize. Letters of marque were forfeited for cruelty under the temporary Act, 55 Geo. III. c. 160.

The performance by Great Britain of her duties as a neutral is mainly provided for by the Foreign Enlistment Act, 1870, superseding the Act of 1819, which was an imitation of the United States Act of 1818, still in force.

It is a well-known chapter of history, and in any case is a story too long to be told here, how the inadequacy of the old Foreign Enlistment Act to enable us to fulfil the alleged duties of a neutral during the American civil war contributed to produce those differences with the United States which were only settled by the Geneva Arbitration. The Report of the Royal Commission which led to the legislation of 1870 is a most instructive commentary on the danger of allowing municipal law to lag behind the requirements of international obligation. The power of prohibiting "the carriage coastwise" of certain goods, conferred upon the Crown by the Customs Consolidation Act, 1853, 16 & 17 Vict. c. 107, sec. 150, is intended rather for the protection of Great Britain when belligerent, than for enabling her better to fulfil her duties when neutral.

ii. For the better performance of duties arising out of treaty.

(α) In some cases the obligatory character of the treaty is expressly made to depend upon its being followed by legislation. So by the Extradition Convention with France of 1852 "Her British Majesty engages to re-"commend to Parliament to pass an Act to enable her "to carry into execution the Articles of the present "Convention"; and it was provided that "when such "an Act shall have been passed, the Convention shall "come into operation, from and after a day to be fixed."

Similarly, the cession of Heligoland by the Convention of 1890 was made "subject to the assent of Parliament." In the former case the necessary legislation was refused. In the latter case it was accorded, by 53 & 54 Vict. c. 32.

(β) In other cases, although the treaty is diplomatically binding, it cannot be carried into practical effect without an Act of Parliament. This was the case with the older Extradition Conventions, and effect was accordingly given to the Conventions of 1842 with the United States and of

1843 with France by 6 & 7 Vict. cc. 76 and 75 respectively[1].

So the Foreign Deserters Act, 1852 (15 & 16 Vict. c. 26), provides for carrying into effect "arrangements made "with certain foreign Powers for the recovery of seamen "deserting from the ships of such Powers when in British "ports, and for the recovery of seamen deserting from "British ships when in the ports of such Powers." Slaves are excepted from the operation of the Act.

Legislation has also been necessary in the case of numerous Fishery Conventions, e. g. 59 Geo. III. c. 38, "An Act to enable Her Majesty to make regulations with "respect to . . . Newfoundland, &c., according to a Con-"vention made with the United States"; 35 & 36 Vict. c. 45, to carry out the Fishery provisions of the Treaty of Washington of 1871; 31 & 32 Vict. c. 45, to carry out the Sea Fisheries Convention with France of 1867; 46 & 47 Vict. c. 22[2], 51 & 52 Vict. c. 18, and 54 & 55 Vict. c. 37, as to the North Sea Fisheries[3].

As to the Slave Trade, see 5 Geo. IV. c. 113, and 36 & 37 Vict. c. 88.

As to Submarine Telegraphs, see 48 & 49 Vict. c. 49.

As to International Copyright, &c., 15 & 16 Vict. c. 12, and subsequent Acts.

As to Mail Ships, 54 & 55 Vict. c. 31.

A series of Acts by which the Government of this country has been empowered to perform its treaty engagements with France, in respect of the fishery rights of the latter country upon the coast of Newfoundland, have an important bearing upon controversies now pending.

[1] Similar legislation may be needed even in the United States, where a treaty is equivalent to an Act of Congress. Cf. Wharton, Dig. sec. 138.

[2] Art 6 is an instance of an express engagement to propose the necessary legislation.

[3] See now also 56 Vict. c. 17.

The 28 Geo. III. c. 35, passed to give effect to the provisions of the Treaty of Versailles of 1783, was put an end to by the outbreak of war with France, and was accordingly included in the Statute Law Revision Act, 1871. The 5 Geo. IV. c. 51, sec. 12, passed to safeguard the revived rights of the French fishermen under the Treaty of 1814, was continued by 2 & 3 Wm. IV. c. 79 till Dec. 3, 1834, when it was allowed to lapse. A judgment of the Supreme Court of Newfoundland, confirmed by the Privy Council[1], having shown the inadequacy of the common law powers of the Crown to authorize such measures as were thought necessary under a *modus vivendi* to which the two nations concerned had agreed, pending the settlement of their differences by arbitration, and the colony refusing to cure the defect by local legislation, a Bill for this purpose was introduced into the House of Lords on March 19, 1891. On the May 28 following, the House of Commons resolved not to proceed with the second reading of the Bill, information having been received that the necessary powers had been granted by an Act of the Newfoundland legislature, which was, however, to remain in force for two years only[2].

(γ) Sometimes the Act is of an enabling character, preceding, and limiting the scope of, treaties for the due performance of which it provides machinery. E. g. the Extradition Acts, 1870, 1873; the Act for the ascertainment of foreign law, and for giving information to foreign courts as to British law (24 & 25 Vict. c. 11); the Foreign Deserters Act, 1852; and the Wills Act, 1861.

(δ) The Act may be passed with a view to an arrangement still under negotiation. So the Seal Fishery

[1] See *Walker* v. *Baird*, '92, App. Ca. 491. The Privy Council avoids expressing an opinion upon the right of the Crown to make treaties of all kinds, and of compelling its subjects to observe them.

[2] *Hansard*, vol. 353, pp. 1210–1245.

(Behring Sea) Act, 1891 (54 Vict. c. 19), was passed on June 11, 1891, in support of the *modus vivendi* signed on the 15th of the same month[1].

I have now directed your attention in detail to certain Acts of Parliament, which may be taken as samples of a larger number, bearing upon our rights and duties towards foreign Governments. But it will be necessary to supplement what has been said by some remarks of a more general character.

(α) We must observe, in the first place, that in no case can the rights asserted, or the duties acknowledged, by such Acts as those under consideration be taken as precisely measuring the international rights or duties of this country. The claim of right made may well be something less than this country thinks itself entitled to assert; while the provision made for the performance of duty is almost always, *ex abundanti cautela*, in excess of what we are prepared to admit could be internationally demanded from us.

(β) We may notice next, what has no doubt already become obvious, the fragmentary character of our legislation upon points of international interest. We have statutory enactments only upon points which have happened to call to them the attention of Parliament; while points of equal importance, but which have not attained this accidental prominence, have been left to the operation of the Common Law.

(γ) Notice again, that any express recognition of International Law in an Act of Parliament is extremely rare. The term "Law of Nations" makes its appearance, as I have already stated, for the first time in the Statute of Anne on the privileges of Embassy, and then was inserted only under pressure from the *corps diplomatique* in London. It occurs again in 55 Geo. III. c. 160, sec. 58, in the Naval

[1] Superseded by the Seal Fishery (N. Pacific) Act, 1893.

Prize Act of 1864, and in the Territorial Waters Jurisdiction Act, 1878; hardly elsewhere.

The newer term "International Law" is, I think, not met with before the Territorial Waters Jurisdiction Act. It recurs in the Sea Fisheries Act, 1883. A few distinctly international terms may be met with in the Statute Book, but they are few indeed. "Neutral ship" is found in 43 Geo. III. c. 153, sec. 15, and in the preamble of 48 Geo. III. c. 37. "A proclamation of Neutrality" occurs in sec. 8, and "in violation of the Neutrality of the Realm," in sec. 14 of the Foreign Enlistment Act, 1870. No such phrase is to be found in the Act of 1819. "Belligerent" occurs in the Naval Prize Act, 1854, sec. 52, in the Foreign Enlistment Act, 1870, secs. 2, 14, and in the Territorial Waters Jurisdiction Act, 1878, secs. 2, 14. The Sea Fisheries Act, 1883, sec. 28, defines the term "exclusive "fishery limits of the British islands." But for these, and perhaps two or three other phrases of a similar nature, to be gleaned only by somewhat minute research, and but for a frequent and explicit reference to the binding obligation of treaties, the language of the Statute Book would lead us to suppose that the legislator was intent only upon the maintenance of British interests, with an occasional somewhat condescending allusion to "Powers with which "Her Majesty is at peace," never troubling himself about that delicately poised balance between domestic and foreign rights which is known as "International Law."

(δ) I have reserved for the last a question which would be answered by judges of the present day in much clearer language than was employed by some of their predecessors: the question—how is a British Court to treat an Act of Parliament which conflicts with a rule of International Law? The same question may, of course, arise with reference to Acts of Colonial Legislatures, and to Orders in Council.

The "Law of Nations" (which I may venture to define

as the public opinion of the Governments of the civilized world, with reference to the rights which any State would be justified in vindicating for itself by a resort to arms) is, no doubt, incorporated into the Common Law which binds the Courts of this country. As the "Law of "Nations," it is, of course, insusceptible of modification by an Act of the British Parliament. The Act can neither bestow upon this country any international right to which it would not otherwise be entitled, nor relieve our Government from any of its diplomatic responsibilities. So Lord Mansfield lays down that the Act of 7 Anne, c. 12, "did "not intend to alter, *nor can alter*, the Law of Nations[1]." But the question to which I wish to call your attention has reference not to the contents of the Law of Nations, but to the claims of the Law to the obedience of a British Court. If it can only claim obedience there through its incorporation into the Common Law of the Realm, we should expect to find that, like any other branch of the Common Law, it will be disregarded by our judges when it comes into conflict with an express enactment of the legislature.

The contrary view has hardly found expression in any of the ordinary Courts of Law or Equity (where indeed one would be as much surprised to meet with it as with any judicial acceptance of Lord Coke's *dicta* as to the nullity of an Act of Parliament which should contravene "Common Right and Reason")[2], although our judges are very careful to presume in favour of such a construction of an Act of Parliament as is consistent with the generally admitted rights of other nations. So it was said by Turner L.J. in *Cope* v. *Doherty*[3]: "It is not, I think, to "be presumed that the British Parliament could intend "to legislate as to the rights and liabilities of foreigners.

[1] *Heathfield* v. *Chilton*, 4 Burr. 2016.
[2] 8 Rep. 118. Cf. Lord Holt in *London* v. *Wood*, 12 Mod. 687.
[3] 4 K. & J. 367.

"In order to warrant such a conclusion, I think that either "the words of the Act ought to be express, or the context "of it very clear [1]."

But Courts of Admiralty, especially when invested with Prize jurisdiction, have been wont to entertain somewhat hazy notions as to the authority under which they were sitting. Perhaps some ground for the views entertained by them is afforded by the Commission which authorizes and requires Courts of Prize to proceed "according to the "course of Admiralty and the Law of Nations." There are, accordingly, to be found judicial *dicta* which would seem to imply that the business of a Prize Court is to administer a sort of cosmopolitan justice, which Acts of Parliament are powerless to distort.

In the *Maria* (1799), Lord Stowell said: "The seat of "judicial authority is, indeed, locally *here*, in the belli- "gerent country, according to the known law and practice "of nations: but the law itself has no locality. It is the "duty of the person who sits here to determine this "question exactly as he would determine the same ques- "tion if sitting at Stockholm [2]."

In the *Recovery* (1807), the same judge said: "This "is a Court of the Law of Nations, though sitting here "under the authority of the King of Great Britain. It "belongs to other nations as well as to our own; and "what foreigners have a right to demand from it is the "administration of the law of nations, simply, and ex- "clusively of principles borrowed from our own municipal "jurisprudence, to which, it is well known, they have at "all times expressed no inconsiderable repugnance." He

[1] So Lord Hatherley (as Vice-Chancellor) in the *General Iron Screw Co.* v. *Schurmans*, 1 Joh. & Hem. 180. "A foreign ship meeting "a British ship on the open ocean cannot properly be abridged of "her rights by an Act of the British Legislature." Cf. the *Saxonia*, 15 Moo., P. C. 262.

[2] 1 Rob. at p. 350.

therefore refused, on the ground of want of competent jurisdiction in the Prize Court, to apply to a foreign vessel the provisions of the Navigation Act against trading with the East Indies [1].

In the *Minerva* (*circa* 1807), Sir J. Mackintosh, then Recorder of Bombay, and acting under a Commission of Prize, spoke of its being "the duty of the judge to dis-"regard the 'instructions,' supposing them 'illegal,' and "to consult only that universal law to which all civilized "Princes and States acknowledge themselves to be sub-"ject." . . . "In the case (which had hitherto been, and "he trusted would continue, imaginary) of such illegal "instructions, he was convinced that English Courts of "Admiralty would as much assert their independence "of arbitrary mandates as English Courts of Common "Law [2]."

In the *Fox* (1811), the language of Lord Stowell is more cautious, one may perhaps add more obscure, than that which is found in the judgments just cited. He labours to show that "these two propositions, that the Court is "bound to administer the Law of Nations, and that it is "bound to enforce the King's Orders in Council, are not "at all inconsistent with each other," by the violent assumption that these orders and instructions will always conform themselves, under the given circumstances, to the principles of the unwritten law which is binding on the Court. He declined to speculate as to the duty of the Court in case of a conflict between the two authorities, because he could not, "without extreme indecency, pre-"sume that any such emergency would happen [3]."

[1] 6 Rob. 348.

[2] *Life*, i. p. 317.

[3] Edwards, 312. Cf. *Nostra Signora de los dolores* (1813) 1 Dods. 290: "as against subjects of other countries it (26 Geo. III. c. 60) has "no such force." This was an Admiralty case. Lord Stowell says it was brought "in a Court whose duty it is to administer the Law of "Nations."

The language of Sir Robert Phillimore, in commenting upon these decisions, shows to what lengths an Admiralty judge of our own day was prepared to carry the views suggested by them.

"It is clear," says the learned judge, "that it has never "been the doctrine of the British Prize Courts that, "because they sit under the authority of the Crown, the "Crown has authority to prescribe to them rules which "violate International Law." Again: "If he [Lord "Stowell] had not so considered them [i. e. considered the "Orders in Council to be consistent with International "Law], and nevertheless had executed them, he would "have incurred the same guilt, and deserved the same "reprehension, as the judge of a municipal Court, who "executed by his sentence an edict of the legislature "which plainly violated the law written by the Creator "upon the conscience of his creature[1]."

Even in exercising the "instance jurisdiction" of the Court of Admiralty, i. e. when not sitting as a Court of Prize, Lord Stowell seems to have consistently declined to apply Acts of Parliament in a sense in which they would have contravened International Law. As he said in *Le Louis*, "The legislature must be understood to have "contemplated all that was within its power, and no "more[2]."

The latest authoritative utterance of the Court of Admiralty upon the subject is probably to be found in the case of the *Annapolis*; in which, after stating that Parliament has not, according to public law, any authority to legislate for foreign vessels on the High Seas, Dr. Lushington adds: "though, if Parliament thought fit to do so,

[1] 3 Phill. *Int. Law*, sec. 436.

[2] (1817) 2 Dods. 239. The captor's commission here was founded on the Slave Trade Act, 51 Geo. III. c. 23. Cf. the *Karl Johann*, cited in the *Girolamo*, 3 Hagg. Adm., and *Nostra Signora de los dolores*, u. supra.

the Court, in its instance jurisdiction at any rate, would be bound to obey. In cases admitting of doubt, the presumption would be that Parliament intended to legislate without violating any rule of International Law[1]."

The result of the cases cited may be summed up as follows:—

1. An Act of Parliament will be so construed, if possible, as not to conflict with a rule of International Law.

2. If it plainly does so conflict, it, and not International Law, must be obeyed in all Courts, except, as seems to be held both by Lord Stowell and by Dr. Lushington, in a Court of Prize.

This exception, we may venture to predict, will prove to be non-existent. It is now more clearly understood than it was when the question was raised before Lord Stowell, that the powers of all British Courts are derived from, and must be exercised only in conformity with, British law; which, when it speaks as an Act of Parliament, negatives the possibility of any doctrine in contravention of the Act being British law by tacit adoption[2].

3. It is, on the other hand, quite certain that no Act of Parliament, or decision given in accordance with its provisions, will relieve this country from liability for any

[1] 30 L. J. Pr. M. & Ad. 201.

[2] Even A. Gentili says, as to the authority of the Civil Law in the Court of Admiralty: "Ut sic ego iura haec duo distinguo. Non appello "alterum Anglicum, alterum autem Romanum. Nec enim in regno "principe aliud ius fit quam regni ipsius." (*Adv. Hisp.* i. c. xxi. p. 95.) Lord Chief Justice Cockburn states the principle in the broadest possible manner: "If the legislature of a particular country should "think fit by express enactment to render foreigners subject to its "law, with reference to offences committed without the limits of its "territory, it would be incumbent upon the Courts of such country to "give effect to such enactment, leaving it to the State to settle the "question of International Law with the Governments of other "nations." *Reg.* v. *Keyn*, L. R. 2 Ex. D. at p. 160.

results of the Act, or decision, which may be injurious to the rights of other countries.

I have been able to deal only with the salient features of a topic upon which little has hitherto been said or written; but have perhaps said enough to suggest the necessity for some study of the limits which are imposed upon national legislation by the principles of International Law.

XI

THE TREATY RELATIONS OF RUSSIA AND TURKEY, 1774–1853[1]

THE Treaty of Paris has at length ceased to bear the strain of altered circumstances; and Russia, by her declaration of war, has again taken up the attitude which one-and-twenty years ago she was obliged to abandon.

Once more she stands face to face with the Ottoman Empire, as she stood before the Eastern Question was taken under the joint supervision of the Great Powers: and it is natural that those who wish to predict her conduct in the future should turn to the record of her conduct while she occupied a similar position in the past.

It is the fashion to speak of the Crimean war as a political blunder. It cannot, however, be denied to have been a complete diplomatic success. It tore up a series of treaties under which Russia had gradually acquired a special right of interference in the affairs of Turkey. By the Treaty of Paris the Czar was remitted to such

[1] A Lecture delivered in 1877. London, Macmillan & Co. (with an Appendix of Treaties), 1877.

rights only against the Porte as he possessed irrespectively of convention; and in the exercise even of these he was subjected to new disabilities. These disabilities have since been partially removed; but the rights of Russia, as against the Porte, remain as they were defined in 1856, and those which she enjoyed previously to 1853 have never been recovered.

The system of treaties which for three-quarters of a century had regulated the relations of the two Empires became thus of no effect; but some acquaintance with that system, its antecedents and its surviving consequences, is indispensable to an understanding of the politics of the present day. The treaties in question are indeed important, not only as marking epochs in the external history of Russia and Turkey, but also as registering the gradual growth of pretensions which were none the less kept in view because their diplomatic expression received a check.

The period to which I propose to ask your attention lies between the years 1774, the date of the Treaty of Kutschouc-Kainardji, and 1853, the date of the outbreak of the Crimean war.

Before that period there had been numerous conventions between the two Powers, but they were all expressly cancelled by the Treaty of Kainardji.

During the period in question, the two countries were often at war, but peace was always concluded upon the basis of that great treaty.

An identity of purpose runs through the whole series of treaties which we are about to examine. Their aim is—the aggrandizement of Russian territory, and the assertion of a special Russian protectorate over the Christian provinces of Turkey. The idea of the Treaty of Paris is the negation of both of these claims.

Such an account of the system of treaties preceding

the Crimean war as I propose to lay before you can hardly be otherwise than dry. I shall be content if it is nevertheless of use. My object is not polemical, but merely expository; and I shall speak rather of the treaties themselves, of which, strange as it may seem, it is not very easy to get a complete and accurate view, than of the more accessible history of the political events of which they were results.

It was nearly three centuries after the Ottoman Turks had entered Europe before they came into direct contact with the Russians. The first alliance between the two Powers was made in 1633. Their first war began in 1677, and was closed in 1681, after the Moslem fashion, by a truce for twenty years. It was, however, only two years later that the Turks, on the invitation of the Protestant malcontents of Hungary, began a war with Austria, which soon developed into a war with many other German States, with Venice, with Poland, and with Russia also, and was concluded in 1699 by the general Peace of Carlowitz. Of the many territorial losses in which Turkey was at this time obliged to acquiesce, not the least important was that of the town and neighbourhood of Azof, the cession of which to Peter the Great gave him the port which he had long coveted for his Black Sea fleet.

The Peace of Carlowitz, as between Turkey and Russia, was a truce for two, subsequently extended to thirty, years, upon the principle of the *uti possidetis*.

Numerous wars were waged during the early half of the eighteenth century between Russia and Turkey, by no means always to the advantage of the former. Thus, by the Peace of Falczi (1711) Peter the Great had the mortification of being obliged to purchase his own safety and that of his army by restoring Azof to the Porte; and by the Treaty of Belgrade (1739), which was observed

between the Porte and Austria for half a century[1], and between the Porte and Russia for thirty years, that town was to be demolished and deserted.

In 1768 a war began which was to produce more permanent diplomatic results. The Porte, at the instigation of the French Ambassador, complained of certain circumstances connected with the partition of Poland, and declared war against Russia. Into the story of that war, the exploits of Romanzow and Dolgorouki, the destruction of the Turkish fleet at Tchesmé by a Russian fleet which had sailed round from the Baltic, the revolts of Syria, Egypt, and Greece, it is impossible to enter. The struggle continued till the Grand Vizier was surrounded at Schumla, and begged for peace, which was concluded on July 10, 1774, by the Treaty of KUTSCHOUC-KAINARDJI.

At this point begins the series, or system, of treaties which we are about to consider. The other great names of the series—Jassy, Bucharest, Ackerman, and Adrianople, one and all have this characteristic in common: the Treaty of Kutschouc-Kainardji is the text, upon which they are but commentaries.

This being the case, it is of course highly important to get a clear idea of the general scope of this model treaty, and to discriminate between the various classes of topics with which it attempts to deal.

In examining a treaty of peace, it is proper to distinguish—

1. Such recitals and articles as have to do with the circumstances under which it was made, and define its general purport.

[1] Though only made between these parties for twenty-seven years, and not formally renewed. Schoell, vol. xiv. p. 399. The first "perpetual peace" between the Porte and Russia is that of 1720, which also stipulates for a permanent Embassy at Constantinople. Schoell, vol. xiv. p. 298. See also an article by M. Rolin-Jaequemyns in the *Revue de Droit International* for 1876, p. 305.

2. Such articles as are of a purely temporary character, those e. g. for exchange of ratifications, for cessation of hostilities, for evacuation of occupied territory, for amnesty.

3. What are curiously enough called "*articles transitoires*," because they operate irrevocably and once for all, though the result of their operation is permanent. Of this character are cessions of territory and definitions of boundaries.

4. Articles which create obligations; i. e. rights and duties, which will continue to subsist for an indefinite period.

And it must be remembered that "transitory articles," operating once for all, are not affected, as is the case with most articles creating obligations, by the subsequent outbreak of war between the contracting parties.

The Treaty of Kainardji contains twenty-eight articles. There is something of victorious arrogance in the recital —that it is made "in the tent of the Commander-in-Chief, "Field Marshal Count de Roumanzow, near the village "of Kutschouc-Kainardji, upon the right bank of the "Danube."

The Porte promises to recognize the Russian sovereign as Empress, or "Padischag" (art. 13).

Unlike most of the earlier treaties between the two Powers, it is no truce, but a "perfect and perpetual "peace[1]."

Unlike the later treaties, to which we shall come presently, it makes a clean sweep of all that has gone before: "The two Emperors have agreed to annihilate, "and leave in an eternal oblivion, all the treaties and "conventions heretofore made between the two States, "including therein the Convention of Belgrade, with all

[1] The treaties of 1720 and 1739 were also for "perpetual peace."

"those subsequent to it; and never to put forth any claim "grounded upon the said conventions" (art. 22)[1].

Six articles are so purely temporary in their operation as not to need further notice.

Of the residue, eight effect a redistribution of territory; while ten create obligations to pursue certain lines of conduct.

Russia gives up most of the territory which she had overrun. She restores to Turkey Bessarabia, Wallachia and Moldavia, and the islands of the Archipelago (16); retaining however Kinburn, Yenikale, Kertsch, and Azof, with their adjacent districts (18-20).

On the Asiatic side Russia will evacuate Georgia, and will not in future meddle with its inhabitants, "as the said "people are subjects of the Sublime Porte;" which however renounces its claim to exact from them a tribute of children (23).

The Tartars are henceforth to be an independent nation, governed by their own Khan; except that they shall, "as "to the ceremonies of religion, regulate themselves with "respect to the Sultan in his capacity of grand caliph of "Mahometanism, according to the precepts of their law" (3). The two Kabardas are to be united to Russia, only if the consent of the Khan can be obtained (21).

The net result of these territorial provisions is—that Turkish territory, instead of encircling the Black Sea, is bounded on the north-east by the river Boug. The Tartars east of this river, instead of being subject to the Porte, are, except in spiritual matters, an independent nation; while the most important positions on their seaboard have passed into the hands of Russia.

As to the obligations, positive and negative, created by the treaty. We may pass without remark several articles dealing with questions of detail, such as—extradition

[1] Except the definitions of the boundary of the territory of Azof contained in the Convention of Constantinople of 1700.

(2), settlement of boundary disputes (15), the right of either party to construct fortresses (4), and the influence which the Porte is to bring to bear upon the African Regencies (12).

The really important articles of this class are those which stipulate for a Russian Embassy at Constantinople, for good treatment of Christians, and for freedom of commercial navigation.

I. There is to be a permanent Russian Embassy, the staff of which is to be protected (5, 6, 9); and besides the chapel of the Minister, a new church of the Greek rite may be built at Galata, which is to be under his protection, and on behalf of which and of its clergy he may at all times make representations, which are to be taken into friendly consideration by the Porte (7, 14). The Porte engages always to protect the Christian religion and its churches (7), and to permit pilgrimages (8).

These are the stipulations which Lord Clarendon declared to have become, "by a wrongful interpretation, the "principal cause" of the Crimean War[1]. Russia had construed the right of interference granted to her on behalf of a given church, to be erected in a given street at Galata, as a right of interference on behalf of the Greek Church in Turkey generally.

II. The islands of the Archipelago and the Principalities of Wallachia and Moldavia are restored to the Porte only upon conditions for their better treatment. The permanent stipulations with reference to the Principalities provide—for the toleration of Christianity, for respect to be paid to clergy, for future good treatment and moderate taxation, and that each province may have a (Greek) Christian *chargé d'affaires* at the Porte; and these functionaries, "notwithstanding their comparative want of importance, shall be "considered as persons enjoying an international position "that is to say, as protected from all violence."

[1] *Eastern Papers*, xi. p. 2.

The resident Minister of Russia may, as circumstances require, make representations with respect to the Principalities, which shall be favourably listened to by the Porte (16).

III. As to commerce, there is to be unimpeded navigation for the merchant ships of both Powers in all the seas which wash their shores. The Porte will open the navigation of the Danube. It will also permit consuls to be stationed throughout its territory, and both Powers will allow traders to traverse their dominions by sea and land (11).

The permanently important provisions of this treaty may be summarized as follows:—

1. The Tartars were released from allegiance to Turkey, and brought under Russian influence.

2. Russia obtained a firm footing on the north coasts of the Black Sea; pushing back the Turkish frontier to the river Boug.

3. The frontier line between the two Powers in Asia was left much as it was before the war.

4. Russia stipulated for an Embassy at Constantinople, and for certain privileges for Christians in Turkey.

5. She exacted promises for the better government of the Principalities; reserving a right of remonstrance if those promises were not kept.

6. She obtained a declaration of her right of free commercial navigation in Turkish waters.

It will be found that all subsequent controversies between the Porte and Russia may be referred to one or other of the six heads to which I have reduced the topics dealt with by the Treaty of Kutschouc-Kainardji.

Of the six topics, that relating to the Tartars was the first to give rise to new difficulties and to receive a final settlement.

In 1779 a *convention explicative* was needed to define the supremacy reserved over them by the Porte as being of a purely spiritual character[1]; and in 1783 Catherine summarily disposed of all doubts upon the subject by a ukase annexing the Tartars to the Empire of Russia[2]. The Porte was obliged for the moment to acquiesce in this proceeding, and even to confirm it by a convention of the following year[3]; but in 1787 declared war. The struggle was indeed inevitable. Catherine of Russia, who dreamed of reviving the Byzantine Empire in favour of her second grandson Constantine[4], and Joseph II, who was anxious, as he said, "to revenge mankind on these barbarians," had planned to divide between them the inheritance of the Turks.

Great, however, as were the military successes of the allies, they had but little permanent result. Partly in consequence of the jealousy of the maritime Powers, and partly on account of the threatening attitude of France, Austria handed back Servia to the Porte by the Peace of Sistova in 1791, and Russia in the following year resigned those provinces of the lower Danube which had been won for it by the ruthless Suarrow[5]. This was by the treaty of perpetual peace signed at JASSY on January 9. 1792[6].

[1] Schoell, vol. xiv. p. 438; Martens, R. 2. ii. p. 653. There were conventions of 1781 and 1782 as to alleged violations of the Bosphorus by Russian war-ships.

[2] April 8, 1783. On June 21, 1783, a treaty of commerce was signed; q. v. in Martens, R. 2. iii. p. 615.

[3] Jan. 8, 1784. Martens, R. 2. iii. p. 707.

[4] The idea was encouraged by Potemkin, who took care that Catherine, in the course of a progress through Kherson, should pass under a triumphal arch inscribed: "This is the road to Byzantium."

[5] It was expected that Servia would remain under Austrian rule; but though Prussia inclined to this, England and Holland opposed, and at last all the Powers, intent only on the balance of power against France, urged the Peace of Sistova, Aug. 4, 1791. Martens, R. 2. v. p. 244.

[6] It contains thirteen articles, of which six (8–13) are temporary.

It confirms the Treaty of Kainardji and the *convention explicative*; but the Porte recognizes the annexation of the Tartars (art. 6), and the Russian frontier is advanced to the Dniester. The obligatory clauses have reference to the Danubian Principalities and to commerce. By article 4 Moldavia is restored, on condition that the Porte carries out the stipulations of the Treaty of Kutschouc-Kainardji and the *convention explicative*. Article 7 declares that "trade is the most lasting bond of harmony," and accordingly confirms the commercial treaty of 1783.

The aggressions of France, which had much to do with bringing about this treaty, before long so altered the relations of the Eastern Powers that in 1798 Russia and Turkey signed a treaty of alliance for eight years[1]. Their fleets sailed out of the Dardanelles in company, and operated together against the French in the Adriatic. Russia made peace in 1801, but the Porte, slow to forgive the invasion of Egypt, did not do so for a year later[2].

When France and Russia were again at war in 1805, Turkey hesitated between them, till Austerlitz inclined the balance in favour of Napoleon, when the Porte acknowledged his title of "Emperor," and submitted itself to the guidance of his Ambassador, Sebastiani[3]. Under that guidance it rejected the demands, which it had almost conceded, of the insurgent Servians, and, without consulting Russia (as it was bound to do[4]), deposed Ypsilanti and Moruzzi, the Hospodars of Wallachia and Moldavia. Russia demanded redress, but without waiting for a reply, in October, 1806, invaded the Principalities. The Porte declared war in the following January, and remained firm in its resolution, though Admiral Duck-

[1] On Dec. 23, 1798. Great Britain acceded by a treaty of Jan. 5, 1799. Martens, R. 2. vi. p. 532.

[2] Till June 25, 1802.

[3] He was sent out in the summer of 1806.

[4] By the Hatti-Scherif of Sept. 22, 1802.

worth with the English fleet threatened Constantinople. Sebastiani assisted to put the capital in a state of defence [1], and Napoleon declared that "he and the Grand Seignior "were as inseparable as the right and left hands."

It is well known that the Treaties of Tilsit contained very contradictory provisions with reference to the Danubian Principalities [2]. By the patent treaty, Napoleon stipulated for their restoration to Turkey; and an armistice was accordingly concluded at Slobosia between Russia and the Porte [3]. By the secret treaty, on the other hand, Russia was to take Wallachia and Moldavia as her share of the spoil [4]. The true nature of the understanding between Napoleon and Alexander, commenced at Tilsit and confirmed at Erfurt, was fully revealed when, at the Conference of Jassy (1809), Russia demanded the cession of the two Principalities and the expulsion from Constantinople of the Ambassador of Great Britain [5]. The terms were refused, and the armistice came to an end.

The renewal of hostilities between France and Russia in 1812 was the signal for peace between the latter Power and the Porte. The Turks were not sorry of an opportunity of repaying Napoleon's abandonment of their cause by refusing to co-operate with his Moscow expedition, and were only too glad to recover the Danubian Principalities (which they had looked upon as irretrievably lost), sacrificing only Bessarabia. With this arrangement the Emperor Alexander was also fain to be content, in order to be free to concentrate his strength against the French.

[1] "L'Ambassadeur de France est en même temps le premier ministre "et le connétable du grand Seigneur." Bignon, t. vi. p. 193.

[2] Martens, R. 2. viii. p. 639.

[3] Aug. 4, 1807. Martens, R. 2. viii. p. 689.

[4] It is said that Alexander asked to be allowed to take Constantinople also, "the key of his house;" and that Napoleon refused, muttering: "Never; it is the empire of the world."

[5] On January 5, 1809, the Porte signed a treaty with Great Britain. Martens, R. 2. vi. p. 568.

The treaty of peace was signed at BUCHAREST, on May 28, 1812. Its ratification by the Porte was largely due to the exertions of Lord Stratford de Redcliffe, who at that date had already attained the rank of Minister Plenipotentiary at Constantinople.

It proclaims perpetual peace, and confirms the previous treaties (arts. 1 and 3).

Of its sixteen articles, nine are temporary (2, 7, 9–11, 13–16).

The territorial arrangements are a return to the *status quo*; except that the Russian boundary is henceforth to be the Pruth, to its entrance into the Danube, and from that point the left bank of the Danube, down to its entrance into the Black Sea by the Kilia mouth. The "great "islands" are to be left vacant (4, 6)[1].

Of the more important obligatory stipulations, article 5 provides for the due observance of the Treaties of Kainardji and Jassy with reference to Moldavia and Wallachia[2]. Article 8 deals for the first time with Servia; reciting that "there can be no doubt that the Porte, in accordance "with its principles, will show kindness to the Servians, "as a people long subject and tributary to it," but going on to state that it has nevertheless been thought proper, "in consideration of the share which the Servians have "taken in the war, to make a solemn agreement for their "safety." The Porte therefore promises that while it will continue to garrison the strong places, it will allow to the Servians "such liberties as are enjoyed by the islands of "the Archipelago; and, as a token of its generosity, "will leave to them the administration of their internal "affairs." By article 12, the Porte will carry out carefully the commercial treaty with reference to the Barbary coast[3].

[1] The Turkish population of Bessarabia mostly emigrated.

[2] This article confirms article 4 of the Treaty of Jassy.

[3] Referring to the Treaty of Jassy, art. 7.

For some time after the fall of Napoleon, the politics of St. Petersburg gave no encouragement to discontented nationalities. Alexander refused to support either the revolt of Ypsilanti in Moldavia or the insurrection in Greece. Nicholas, who succeeded him in 1825, was of a different stamp, and lost no time in complaining of the occupation by the Porte of Wallachia and Moldavia, and other violations of the Treaty of Bucharest. His grievances were detailed in an *ultimatum* of eighty-two articles, and the Porte, having just slaughtered the Janissaries, and being therefore in no condition for resistance, on the mediation of England and Austria, professed to concede all his demands by the Convention of ACKERMAN, signed on October 7, 1826[1].

This treaty purports to be "destined to determine "the manner of putting in force all the articles of the "Treaty of Bucharest, which have not been executed "by the Porte since 1812 . . . to assure and revive all the "privileges which Moldavia and Wallachia and Servia "ought to enjoy under the guardianship of the Cabinet "of St. Petersburg[2]." Of its eight articles three are temporary or unimportant.

As to territory, the fourth article applies to the Asiatic boundary the principle of the *uti possidetis*; and the provisions of the Treaty of Bucharest as to the great islands of the Danube having proved unworkable, the Porte, by article 2, agrees to the proposals made with reference to them by a conference held in 1817.

The important obligatory articles relate to the Danubian Principalities and to commerce.

By article 3, the Porte promises to carry out article 5 of the Treaty of Bucharest with reference to Wallachia

[1] Martens, N. R. vol. vi. p. 1053. The Duke of Wellington vainly endeavoured to prevent the Emperor from exerting this pressure on the Porte. *Despatches, Second Series*, vol. iii. p. 159.

[2] Article 3 confirms the Treaty of Bucharest upon this point.

and Moldavia, to renew in six months the Hatti-Scherifs of 1802, and to supplement them by certain provisions contained in an annexed Act, relating mainly to the election of the Hospodars by the Boyards for seven years, and the necessity of previous notice to Russia before they can be deposed by the Porte[1].

By article 5, the Porte agrees to execute the eighth article of the Treaty of Bucharest with reference to Servia; "which being *ab antiquo* subject and tributary "to the Sublime Porte, ought to experience on every "occasion the effects of its clemency and generosity." Privileges will therefore be granted to it, "the enjoy- "ment of which," it is said, "will be at once the fitting "recompense and the best guarantee of the fidelity of "which that nation has given proof to the Ottoman "Empire." A Hatti-Scherif is to be issued within eighteen months, in conformity with an annexed Act which provides for the concession to "cette nation fidèle et soumise" of the right of independent interior administration, and prohibits the residence of Mussulmans in Servia, except in the garrison towns.

The seventh article is a confirmation of the treaty of commerce of 1783, and of the Treaties of Jassy (7) and Bucharest (12), and contains further stipulations in favour of Russian trade and navigation.

It is not surprising that a convention which the Porte had no intention of keeping[2] was soon broken. Besides giving other grounds of complaint, the Turks refused to acknowledge the independence of Greece[3], and in April,

[1] Act 1.

[2] It was declared in a Hatti-Scherif of December, 1827, that these negotiations were only intended to gain time for preparation for war.

[3] The battle of Navarino on Oct. 20, 1827, enraged the Porte, which refused to recognize the new settlement of Greece; and although the Ambassadors of the three Powers left Constantinople, refused to carry out the Treaty of Ackerman, and issued the offensive Firman.

1828, Russia declared war. Then, after a first unsuccessful campaign, at which the Emperor Nicholas was himself present, came the wonderful march into the heart of Roumelia of Diebitsch, the "crosser-of-the-Balkans," and the treaty which he dictated at ADRIANOPLE.

This treaty, signed on September 14, 1829, is one of "perpetual peace" (1); confirming the previous treaties (15). Russia restores her conquests, including Adrianople and other places in Roumelia (2). The Pruth and Danube are to be, as before, the boundary between the two Empires; but the line is now to be drawn to the St. George's, instead of to the Kilia, mouth of the Danube; so that all the "great islands," which are however to be left unoccupied, are to become Russian territory (3).

On the side of Asia, the Russian title to Georgia, and other provinces of the Caucasus, is acknowledged; and the boundary line is to be drawn anew (4 and 9).

The Porte, by adhering to the Treaty of London of 1827, and the Act of March 22, 1829 (10), recognizes the qualified independence of Greece.

Of the sixteen articles of the treaty, six are of a temporary character[1], one of these relating to a war indemnity.

The articles creating permanent obligations relate to Wallachia and Moldavia, to Servia, and to commerce.

As to Wallachia and Moldavia, it is provided, by article 5, that since the two Principalities are placed under the suzerainty of the Porte, and since "Russia has "guaranteed their prosperity," they are to retain the privileges more particularly set forth in a separate Act. By this Act, the Act annexed to the Convention of Ackerman is confirmed, but the Hospodars are henceforth to be elected, not for seven years but for life, and are to have full liberty in managing the interior affairs of the

[1] viz. arts. 8, 11–14, 16.

Principalities. No Mussulman is to reside there; and those possessing landed property there must sell it within eighteen months. The provinces are to be exempt from requisitions. Their tribute is to be somewhat increased. The Porte will sanction the administrative regulations made during the Russian occupation[1].

As to Servia, the Porte, having been prevented by circumstances from executing as yet article 5 of the Treaty of Ackerman[2], promises within one month to do so (6)[3].

The provisions for freedom of commerce contain, besides the usual stipulations for navigation by merchant vessels of the Black Sea and the Dardanelles, stipulations that Russian traders shall be under the exclusive jurisdiction of their own consuls, and that their ships shall not be liable to visitation by Turks, even when in Turkish harbours (7)[4].

Such was the treaty which the Duke of Wellington thought must be regarded, by all the Powers of Europe, "as the death-blow to the independence of the Ottoman "Porte, and the forerunner of the dissolution and extinc- "tion of its power[5]."

With the Treaty of Adrianople ends the series of permanent and substantive conventions, made between the Porte and Russia only, during the period to which we have limited our inquiry. The remaining conventions of this period to which the two Powers were parties must not, however, be passed over in silence; although they were either mere suspensions and modifications of the

[1] In 1831 an organic Statute was granted to Wallachia and Moldavia.

[2] With annexed Act 2.

[3] This promise was performed by Hatti-Scherifs of Oct. 1829, Aug. 1830, and Dec. 1838.

[4] The Treaty contains in all sixteen articles, with two Acts.

[5] *Despatches, Second Series*, vol. iv.

Treaty of Adrianople, or were of merely temporary operation, or were not made between the Porte and Russia only.

Thus by the Treaty of Unkiar-Skelessi, made in 1833, as the price paid by the Porte to Russia for saving Constantinople from the victorious army of Mehemet Ali, the Dardanelles were to be closed to the ships of war of every other nation. This convention, though its operation was limited to eight years, was considered by Europe to have reduced Turkey almost to a position of vassalage to the Czar.

A treaty signed at St. Petersburg in the following year, on January 29, is mainly explanatory of the Treaty of Adrianople. The first article interprets the fourth article of that treaty, defining the Asiatic boundary of the two Empires. By article 2 the Porte agrees within two months to fulfil its promise of formally recognizing the constitution adopted for Wallachia and Moldavia during the Russian occupation of those provinces. The third article relates merely to the mode of payment of moneys due from the Porte under the Treaty of Adrianople.

A convention signed at Constantinople[1] in 1836, on March 27, deals entirely with the payment of these same moneys.

The convention signed in 1849, on May 1, at Balta-Liman is a temporary measure, providing in an exceptional manner for the government of Wallachia and Moldavia for seven years; during which the constitutions of the Principalities were to be revised by commissions nominated for the purpose.

Before the seven years had expired the whole system of treaties by which Russia had gradually acquired the position of something like sole guardian of the Turkish

[1] Of three articles. There was a Treaty of Commerce of Balta-Liman of the year 1846.

Empire was destroyed by the Crimean war. Symptoms had indeed not been wanting, previously to 1853, that the days of that exclusive guardianship were numbered. The settlement of the relations of the Porte to the Pasha of Egypt, which in 1833 had been undertaken by Russia alone, were in 1840 judged to be of common concern to all the Great Powers; and the two treaties of London, of 1840 and 1841, were unmistakable assertions of the determination of Europe that the Treaty of Unkiar-Skelessi should not be repeated.

We have now traced the historical development of the system of treaties which was in force between Russia and Turkey in 1853, and was cancelled and superseded by the new settlement of affairs attempted by the Treaty of Paris.

In following the chronological order of events it is, however, hardly possible also to keep continuously in view the separate history of each of the subordinate questions which go to make up the Eastern Question as a whole. Let us therefore revert for a moment to the Treaty of Kainardji, and see how each of the more important of the questions dealt with in that Treaty have fared in the several conventions by which it was successively explained and expanded.

We have seen that the topics of permanent interest mapped out in that model, or foundation treaty were six in number. Its provisions relate to:—1. The position of the Tartar nation; 2. The boundary-line between Turkey and Russia on the north of the Black Sea; 3. The boundary between the two Empires towards Asia; 4. The Russian Embassy at Constantinople, and the toleration of Christians in Turkey; 5. The better treatment of the Christian vassal States of the Porte; and 6. Freedom of trade and navigation.

1. The Tartars, whose independence was declared

by the Treaty of Kutschouc-Kainardji, and the merely spiritual nature of whose dependence upon the Sultan was acknowledged by the *convention explicative* of 1779, were annexed to Russia by a ukase of 1783; and the arrangement, though repudiated during the war which broke out in 1787, was finally recognized at the Peace of Jassy in 1792.

2. By the Treaty of Kainardji, Russia gained lasting possession of detached ports on the Black Sea; such as Azof, Yenikale, Kertsch, and Kinburn; and generally pushed her frontier in those regions as far west as the river Boug. This frontier was advanced by the Treaty of Jassy to the Dniester; and by the Treaty of Bucharest, 1812, to the Pruth and that part of the course of the Danube which lies between its confluence with the Pruth and its union with the Black Sea by its Kilia mouth. The "great islands" were to be left vacant.

The boundary-line thus drawn by the Treaty of Bucharest remained unchanged to the time of the Crimean war, except that by the Treaties of Ackerman and Adrianople the "great islands" were thrown into the territory of Russia.

A new question of Turkish, though not also of Russian, boundary was introduced by that article (10) of the Treaty of Adrianople which records the adhesion of the Porte to the Treaty of London with reference to Greece [1].

3. On the side of Asia, the Treaty of Kainardji allowed the Khan to assent to the annexation to Russia of the two Kabardas, but Georgia and Mingrelia were expressly acknowledged to be subject to the Porte. The Treaty of Jassy merely stipulates for *bon voisinage* in Asia. The Treaty of Bucharest returns to the *status quo*, and the

[1] The boundary-line was drawn by the Act signed at Constantinople on July 21, 1833, confirming the protocol of the Conference of London of Feb. 3, 1830, which had declared Greece to be an absolutely independent State.

Treaty of Ackerman confirms the *uti possidetis*. The Treaty of Adrianople recites that Georgia, Mingrelia, and other provinces of the Caucasus have long been in the possession of Russia, and gives to that Power the whole coast as far south as Port St. Nicholas, whence the frontier line trends inland, in a direction more particularly determined by the convention of 1834.

4. To the provisions of the Treaty of Kainardji—as to the Russian Embassy and its interpreters (5, 6, 9), as to the church to be built at Galata (7, 14), as to the facilities for pilgrimages to be granted by the Porte (8), and as to the general protection promised by the Porte to the Christian religion and its churches—no addition was made by the subsequent Treaties.

5. The conditions upon which the Principalities of Wallachia and Moldavia were restored to the Turks by the Treaty of Kainardji (16) were substantially repeated in the *convention explicative* of 1779[1]. Their observance was also stipulated for by the Treaties of Jassy and Bucharest. The Convention of Ackerman goes further. By it the Porte not only renews the promises made at Kainardji, but adds to them the provisions of a Hatti-Scherif of 1802 and those of a separate Act annexed to the convention, which allows the election of the Hospodars by the Boyards for seven years, and undertakes that they shall not be deposed during their term of office without due notice to Russia. By the Treaty of Adrianople the Hospodars are to hold office for life. The Turks are to retain no fortresses on the left bank of the Danube, and no Mussulman is to reside in the Principalities. The Porte resigns its right to contributions of corn and other necessaries, and to forced labour, and will sanction the administrative regulations made during the Russian occupation.

[1] Art. 7. By § 6 of this article Russia expressly confines the right of interference reserved for her by the Treaty of Kainardji to the five cases specified in the article.

It will be remembered that the liberties of Servia are for the first time stipulated for by Russia in the Peace of Bucharest (8). It is to enjoy the administration of its own internal affairs. By the Convention of Ackerman the Porte promises to carry out this arrangement, and to confine Mussulman residents to the garrison towns. By the Treaty of Adrianople the Porte renews this promise, which circumstances have as yet prevented it from executing, and will restore to the Principality six districts which had been taken from it (6).

6. Freedom of commercial navigation was proclaimed in the Treaty of Kainardji; and provisions to the same effect were contained in the *convention explicative*, the Commercial Treaty of 1783, and the Treaties of Jassy, Bucharest, and Ackerman. The Treaty of Adrianople adds a stipulation that Russian ships shall not be visited even when in Turkish harbours.

I fear that I have been trying an experiment upon your patience, in addressing to a general audience an analysis of half a dozen treaties; necessarily unaccompanied by any of those details,—strategic, social, diplomatic or biographical,—which, were the subject dealt with at length, might lend to it picturesqueness and life.

My apology must be my belief that treaties are much more talked about than read; and that some precise knowledge of the treaties to which I have asked your attention is just now highly desirable. I have endeavoured to show that the time during which this system of treaties was elaborated is no arbitrarily chosen chronological period, but a chapter of the history of the Eastern Question, having a very distinct character of its own, and succeeded by a chapter of a very different character.

The programme of Kutschouc-Kainardji, perseveringly

pursued throughout the subsequent treaties, was—the gradual advance of Russian territory at the expense of Turkey, and the assumption by Russia of a special protectorate of the Christian vassal States of the Porte.

The programme of Paris was—the integrity of the Ottoman Empire; the negation of the right of any one Power to exercise a special protectorate over the Christian subjects of the Porte; and the substitution for any such protectorate, of the collective guarantee of all the Powers (arts. 22, 28).

The development of the programme of Kainardji was checked by European jealousy of Russian ambition.

The development of the programme of Paris has been, in its turn, arrested by Russia's impatience with the merely co-ordinate position assigned to her in the councils of Europe.

APPENDIX

I.

TREATIES MADE BETWEEN RUSSIA AND TURKEY DURING THE PERIOD 1774—1853.

1774 July 21	Treaty of Peace	KUTSCHOUC-KAINARDJI	Martens, R. 2. ii. p. 286.
1775 Jan. 24	Act as to the Crimea	Constantinople	R. 2. ii. p. 321.
1775 April 4	Boundary Convention	... ...	R. 2. ii. p. 396.
1779 March 10	*Convention explicative*	Constantinople	R. 2. ii. p. 653.
1781	Convention as to violation of the Bosphorus	... ...	Not printed.
1783 June 21	Treaty of Commerce	Constantinople	R. 2. iii. p. 615.
1784 Jan. 8	Act as to the Tartars	Constantinople	R. 2. iii. p. 707.
1792 Jan. 9	Treaty of Peace	JASSY	R. 2. v. p. 291.
1798 Dec. 23	Treaty of Alliance	Constantinople	R. 2. vi. p. 532.
1800 March 21	Convention as to the Seven Islands	Constantinople	R. 2. vii. p. 41.
1807 Aug. 24	Convention of Armistice	Slobosia	R. 2. viii. p. 689.
1812 May 28	Treaty of Peace	BUCHAREST	N. R. iii. p 397.
1826 Oct. 7	Convention for the Execution of the Treaty of Bucharest	ACKERMAN	N. R. vi. p. 1053. Hertslet, p. 747.
1829 Sept. 14	Treaty of Peace	ADRIANOPLE	N. R. viii. p. 152. Hertslet, p. 813.
1833 July 8	Treaty of Alliance	Unkiar-Skelessi	N. R. xi. p. 655. Hertslet, p. 925.
1834 Jan. 29	Convention as to the Asiatic boundary, &c.	St. Petersburg	N. R. G. xv. p. 482. Hertslet, p. 936.

1836 March 27 ...	Convention as to Indemnities ...	Constantinople ...	N. R. G. xv. p. 486. Hertslet, p. 961.
1840 July 15 ...	Convention for the Pacification of the Levant ...	London	N. R. G. xv. p. 488. Hertslet, p. 1008.
1840 Sept. 17 ...	Protocol, ditto. ...	London	N. R. G. xv. p. 488. Hertslet, p. 1023.
1841 July 10 ...	Protocol as to the Dardanelles ...	London	N. R. G. ii. p. 126.
1841 July 13 ...	Convention, ditto ...	London	N. R. G. ii. p. 128. Hertslet, p. 1024.
1846 April 30 ...	Treaty of Commerce ...	Balta-Liman ...	N. R. G. ix. p. 131.
1849 May 1 ...	Convention as to the Danubian Principalities ...	Balta-Liman ...	N. R. G. xiv. p. 378. Hertslet, p. 1090.
1849 Dec. 25 ...	Protocol as to Polish Refugees ...	Constantinople ...	N. R. G. xiv. p. 693.

ABBREVIATIONS.

R. 2. ...	Recueil des principaux Traités, &c., par G. F. De Martens, 2me édition.
N. R. ...	Nouveau Recueil.
N. R. G. ...	Nouveau Recueil Général.
Hertslet ...	The Map of Europe by Treaty since the Peace of 1814, by Edward Hertslet, C.B., 1875.

II.

A TABLE SHOWING THE RELATION OF THE TREATY OF KAINARDJI TO THE SUBSEQUENT GREAT TREATIES.

	Kainardji (28 Articles).	Jassy (13 Articles).	Bucharest (16 Articles).	Ackerman (8 Articles & 2 Acts).	Adrianople (16 Articles & 2 Acts).
General Objects:					
Perpetual Peace	1	1	1	...	1
Previous Treaties cancelled	22	Previous Treaties renewed 2	3	1	15
Territorial:					
The Tartars	3	6			
Archipelago	17	...	...	...	Greece 10
European Frontier	16, 18–20	3	4	...	2
				The Great Islands 2	3
Asiatic Frontier	21, 23	5	6	4	4, 9
Obligatory:					
Russian Embassy	5, 6, 9				
A new Greek Church	7, 14				
The Porte to protect Christians	7				
The Porte to allow Pilgrimages	8				
For good treatment of the Archipelago	17				
„ „ Wallachia and Moldavia	16	4	5	3 and Act 1	5 and Act 1
			For good treatment of Servia 8	5 and Act 2	6
For freedom of Trade and Commerce	11				
Miscellaneous	4, 12, 13	7	12	7	7
Temporary:	10, 24–28	8–13	2, 7, 9–11, 13–16	6, 8	8, 11–14, 16 and Act 2

XII

THE EXECUTION OF THE TREATY OF BERLIN[1]

IT was not to be supposed that the conflicting forces unchained during the war between Russia and Turkey could at once be laid by the signing and sealing of a diplomatic act. Long after July 13, 1878, much remained to be done, not only in the way of negotiation, but also by force of arms, before the Treaty of Berlin could be regarded as fully operative. A paper contract had to be translated into political fact. Its wide generalities had to be worked out into minutely specific detail.

This process I shall attempt to describe; analyzing the main provisions of the treaty, and tracing the steps by which they have been successively carried into effect. It is hardly necessary to forewarn you that such an inquiry cannot possibly be made entertaining, though I hope it will be useful. I shall carefully avoid any mention of those traits of personal conduct or of national aspiration, which have lent so romantic an interest to the events of the last few years; but shall try to give

[1] A Lecture delivered in 1882. Cf. infra, pp. 251–269, and the author's *European Concert in the Eastern Question*, Oxford, 1885, pp. 220–322, 335–358.

a connected view of a series of transactions, the interconnexion of which is by no means obvious, when they appear from time to time as isolated items of the news of the day.

Besides the essential dryness of our subject, we shall labour under another disadvantage in the absence of a map of South Eastern Europe; without which it will be impossible to deal to any effect with the smaller questions of topography. With the larger redistributions of territory in that part of the world, I must assume you to be familiar.

In 1878 history was repeating itself, and the problems which had been solved, for the time, by the Crimean war had once more to be faced. As in 1853, so in 1877, Turkish misgovernment and Christian discontent had been the opportunity of Russia. At the earlier date, as the champion of orthodoxy, at the later, as the saviour of nationalities akin to her own, she had entered on the path which leads to the Bosphorus. On both occasions alike, she had been too strong for the Turks, and the question for decision was whether she was to deal according to her good will and pleasure with the Ottoman Empire, or whether the fate of that Empire was a matter which concerned the European Powers in common.

The question was decided in 1878 as it had been in 1856, but a second Crimean war was avoided. This time the Russians listened to the voice of diplomacy, without trying the arbitrament of arms. The Congress of Berlin, unlike that of Paris, took place without its having been necessary for the Powers to prove that they had the might, as well as the right, to claim collective cognizance of the resettlement of the East.

In the preliminary treaty of peace Russia had taken no account of the opinion of Europe. She had set up her clients, Montenegro, Servia, and Roumania, as independent States. She had sketched an autonomous Bulgaria, ex-

tending from the Danube to the Aegean, and had taken for herself the Dobrudja in Europe and a vast tract of Asia, as part payment of a war indemnity, the unpaid balance of which amounted to more than 300,000,000 Rs.[1]

The problem for the Powers was to persuade Russia in the moment of victory to submit her contract with Turkey to a resettlement from the point of view of the general interest. Lord Loftus had beforehand reminded Prince Gortschakoff that any agreement between Russia and Turkey alone would be binding only on the parties to it, and as soon as the contents of the Treaty of San Stefano[2] were made known they were the subject of strong remonstrances, especially on the part of England. After an interchange of important despatches[3], and after the differences between England and Russia had been smoothed away by at least one secret treaty[4], and the former Power had further provided for her safety by the Convention as to Cyprus[5], the Congress met on June 13, and exactly a month later produced the Treaty of Berlin[6].

The treaty was intended, in the first place, as a reassertion of the claim of the Powers collectively, as against Russia, to take cognizance of the Eastern question; in the second place, as a revision of the settlement of that

[1] Gross total 1410,000,000 Rs., balance 310,000,000 Rs.

[2] q. v. *N. R. G.*, 2me série, iii. p. 246; *European Concert*, p. 335.

[3] See especially Lord Salisbury's circular of April 1, and Prince Gortschakoff's reply of April 11, 1878, *Parl. Papers*, Turkey, 25, 27, 31.

[4] May 30, 1878, printed from the *Globe* in *N. R. G.*, 2me série, iii. p. 269; and alleged to have been followed by another on May 31, 1878. See *Times*, March 11, 1881.

[5] June 4, 1878, *N. R. G.*, 2me série, iii. p. 272; *European Concert*, p. 354; communicated confidentially to the representatives of France and Germany at Berlin July 7, and to Parliament July 8, 1878.

[6] Ratified August 3, by the Porte August 28, 1878.

question which had been made by the Treaty of Paris. A few words upon the first point, before we proceed to consider the second in some detail.

I. At the opening of the Congress, Prince Bismarck explained that the Treaty of San Stefano must be revised, because it affected "European Conventions[1]"; and the Russian delegates were now prepared to admit that it had never been intended as anything more than a rough draft, to be settled by the collective wisdom of the Great Powers[2].

The Treaty of Berlin was accordingly so drawn as to supersede those parts of the Treaty of San Stefano which were held to be of European concern, viz. the articles which relate to Montenegro (1, 2), Servia (3, 4), Roumania (5)[3], Bulgaria (6–11), the Danube (12), Bosnia and Herzegovina (14), Crete (15), the Russian protectorate (22), and the navigation of the Bosphorus (24).

The provisions of the Treaty of San Stefano which were not affected by the Treaty of Berlin[4], and which thus continued to be in force between the parties to the former treaty (11 out of a total of 29), relate to removal of obstructions at the Sulina mouth of the Danube (13), amnesty (17, 27), the balance of the indemnity (19)[5], law-suits in Turkey (20), the inhabitants of districts ceded to Russia (21), the renewal of commercial and consular treaties (23), evacuation in Asia (25, 26), prisoners (28), ratifications (29).

The outstanding questions between Russia and Turkey, chiefly financial, were settled in the final treaty of peace,

[1] *Protoc.* [2] Ib., p. 137.

[3] As to the indemnity to Roumania, see *Protoc.*, p. 156.

[4] *Protoc.*, p. 311.

[5] But see *Protoc.*, p. 170, and Lord Salisbury's despatch covering the treaty; also the final treaty of peace between Russia and Turkey.

which was signed Jan. 27, 1879[1]. The precise mode, however, in which the payment of the war indemnity was to be made remained a topic of controversy, till the signature of a convention on May 14, 1882, fixing the amount due at £T.802,500,000, and providing for the repayment of the principal at the rate of £T.350,000 per annum[2].

II. But a still more important object of the Congress of Berlin was to revise the Treaties of Paris and London. The leading idea of those treaties had been the independence and territorial integrity of the Ottoman Empire, and the preservation of its sovereign rights over the Vassal Principalities. All this was now to be changed. The Porte was to be virtually reduced to tutelage, and its suzerainty over the Principalities was to be finally extinguished.

Such portions, however, of the earlier treaties as are not abrogated or modified by the later treaty are expressly confirmed by it[3], and the unrepealed and permanent provisions of the three treaties, taken together, contain the decision of the Great Powers as to the settlement of Eastern Europe.

The portions of the Treaty of Paris which are still in force relate to the admission of the Porte to the European concert (7), to a resort to mediation before a war between the Porte and any one or more of the other signatories of the treaty (8), and to the navigation of the Straits (10)[4], the Black Sea (12), and the Danube (15–19), respectively. Even if the article as to treaties of commerce is still to

[1] *N. R. G.*, 2me série, iii. p. 468; *European Concert*, p. 348. It embodies the decision of the Congress as to the order in which the indemnity is to rank among the other debts of the Porte.

[2] *N. R. G.*, 2me série, iii. p. 218; *European Concert*, p. 350.

[3] Art. 63.

[4] Cf. *Protoc.*, pp. 210, 214, 243, 270.

some extent operative, only ten of the thirty-four articles of the treaty are now even partially in force[1].

Of the nine articles of the Treaty of London, 1871, those practically operative relate to the navigation of the Straits (2), the Black Sea (3), and the Danube (4–7)[2].

It will be observed that the surviving portions of the older treaties relate, almost exclusively, to subsidiary questions of commerce and navigation. The greater questions,—of the rise of new nationalities, the redistribution of territory, and the narrowing of the Ottoman jurisdiction,—have been newly provided for by the Treaty of Berlin; which must now be examined in detail; with a view, chiefly, of showing how far it has been carried into effect.

First as to those of its provisions which are on the face of them of a merely temporary character.

Art. 64, the treaty is to be ratified within three weeks. As a matter of fact, ratifications were exchanged on the part of all the signatories except Turkey on August 3, and by Turkey on the 28th of the same month.

A class of temporary provisions usual in treaties made at the end of a war, with reference to such topics as amnesty, indemnity, and exchange of prisoners, is but scantily represented in the Treaty of Berlin, which leaves such matters to be mainly regulated by the Treaty of San Stefano. The earlier is, however, superseded by the later treaty with reference to the evacuation of portions of European Turkey.

Art. 32, which orders evacuation within twenty days of certain districts occupied by Montenegrin and Mussulman troops respectively, and art. 41, which fixes a period of fifteen days for similar evacuations on the borders of

[1] Art. 33 is still in force, but relates to the Aland Islands, and therefore has no application to the Eastern question.

[2] Art. 1 merely repeals arts. 11, 13, 14 of Paris, and art. 8 is merely confirmatory of Paris.

Servia, have led to little practical difficulty. More doubt has arisen as to the meaning of art. 22, under which the Russian army of occupation in Bulgaria and Eastern Roumelia was not to exceed 50,000 men, and was to be withdrawn from those countries by the expiration of nine months from the ratification of the treaty, and within a further period of three months was to have passed out of Roumania also. Assuming that the withdrawal of the Russian forces was to begin, not to end, nine months after the ratification, on August 3, 1878, these arrangements seem to have been carried out. The troops began to leave Bulgaria about May 3, 1879[1], and were all gone by August 1. By August 14 no Russian soldier, it was said, remained on the south of the Pruth.

By art. 11 the Ottoman army is no longer to remain in Bulgaria (from which it had in fact been previously driven), but may dispose of its war material. The new Principality is to raze all the old fortresses within one year, or sooner if possible, and is not to construct fresh ones. Although no new strongholds have been made, it appears that the old ones have not yet been razed[2].

Another class of temporary articles relates to the provincial administration of Bulgaria and Eastern Roumelia during the period of Russian occupation.

Under arts. 6 and 7 Bulgaria is to be administered by a Russian Commissioner, assisted by a Turkish Commissioner and by consuls delegated by the Powers. This *ad interim* régime is not to last longer than nine months from the ratification of the treaty. In point of fact, the Russian Commissioner took leave of the new Principality, and published a proclamation of the Czar to the Bulgarians dated April 11, 1879[3].

[1] Speech of Lord Salisbury, May 5, 1879, *Hansard*.

[2] *Parl. Papers*, 1881, Turkey, No. 4, pp. 18, 63. Some of them have become ruinous, but complaints have from time to time been made as to others.

[3] *N. R. G.*, 2me série, v. p. 504.

By art. 19 the *interim* administration of the finances of Eastern Roumelia is entrusted to the Commission which was to prepare a Constitution for that province, acting in concert with the Porte. The work was done by a financial sub-committee of the Commission.

The articles of this treaty, which may be called "permanent," as contrasted with those just mentioned, although many of them are provisional, in the sense of relating to successive stages of very complicated changes, leaving out of account art. 63 which is a formal confirmation of the treaties of 1856 and 1871, may be distributed under eight heads. They deal with—

I. The recognition as independent, with accessions of territory, of the three Principalities over which the Porte had hitherto claimed suzerainty; and the subtraction of new inchoate States from the direct government of the Porte.

II. The administration of Herzegovina and Bosnia by Austria.

III. The advance of the Russian frontier in Europe and in Asia.

IV. The recommendation of cessions to Greece.

V. The regulation of the navigation of the Danube.

VI. Specific engagements of the Porte as to provincial government in Europe.

VII. Engagements as to reforms for the benefit of the Armenians.

VIII. General engagements of the Porte as to religious toleration.

I. The great result of the treaty is the change which it has sanctioned in the relation of the vassal States of the Balkan peninsula to the Porte.

Montenegro, Servia, and the United Principalities of Wallachia and Moldavia are at length freed from the yoke which they had so long and with such varied success endeavoured to shake off.

Montenegro had indeed never acknowledged itself to be

a vassal of the Porte, but was considered, by perhaps all the powers except Russia, to occupy that position; and had been repeatedly entered by the Ottoman troops, which as lately as 1862 had dictated their own terms at Cetigne, and made a military road, protected by blockhouses, for their greater convenience in re-entering the country. Servia had indeed managed, in 1862 and 1867, to get rid of Turkish garrisons, but continued, in the terms of the Treaty of Paris, "to hold of the Sublime Porte," under the collective guarantee of the Powers. Wallachia and Moldavia were still, in the eyes of Europe, "under the suzerainty of the Sublime Porte," although they had acquired a sort of unity by electing one and the same Hospodar, and by inducing the Porte to recognize the dignity as hereditary in his family. Their newly assumed name "Roumania" had not yet acquired diplomatic currency.

The position of these Principalities is henceforth to be beyond question. They are to be recognized, both alike by the Porte and by the Powers, as fully independent sovereign States, and are each to receive an accession of territory. At the same time a new semi-sovereign State, Bulgaria, is carved out of the Ottoman Empire, and succeeds to the ambiguous position of an "autonomous tributary Principality"; while the Province of Eastern Roumelia, without being severed from the Empire, receives a full measure of "administrative autonomy."

No less than forty-five of the sixty-four articles of the treaty are occupied with the conditional admission of the three new States to membership of the family of nations, and with the creation of the two new candidates for eventual admission to such membership.

The topics dealt with by these articles may be grouped under four heads, relating respectively to—

1. The recognition of the three old Principalities as independent (26, 27; 34, 35; 43, 44, 45).

2. The constitutional organization of the new Principality, and the new autonomous Province (1, 3–5, 8–10, 12, 13, 15–18, 20, 21).

3. The territorial delimitation of the Principalities and the Province (2, 14).

4. Minor questions.

1. The recognition of the independence of Montenegro, "by all the Powers who had not hitherto admitted it," is made conditional upon the Principality allowing freedom of worship and of church organization, and not making difference of religion a ground for any kind of civil disability. It is to have no maritime flag, and its waters are to be neutral. Great Britain accredited a minister to Cetigne, January 6, 1879.

The recognition of Servia was made conditional upon similar provisions. The Principality declared its independence August 21, 1878, and a British minister was accredited to it March 3, 1879. On March 6, 1882, on the invitation of the Skuptschina, the Prince accepted the title of King.

The recognition of Roumania, which had declared its independence May 22, 1877, was to be on similar terms as to religion and worship, with the addition of a clause to the effect that "the subjects and citizens of all the "Powers, traders or others, shall be treated in Roumania, "without distinction of creed, on a footing of perfect "equality." It was also made a condition precedent that Roumania should restore to Russia that portion of Bessarabia which had been detached from the empire by the Treaty of Paris. The Roumanian Chambers having duly voted the cession, Russian Commissioners were sent to take possession of the country, and entered Ismaila, where they professed to have been received with enthusiasm, October 13, 1878.

A much longer delay took place in satisfying the other requirement of the treaty, owing to the strong feeling

which everywhere prevailed against the Jews. In August, 1879, the Powers had nearly agreed upon coercion to obtain the desired legislation. A Bill for the naturalization of Jews was at length passed, October, 1879, and Russia, Austria, and Italy were satisfied; but it was not till February 20, 1880, that identical notes were forwarded to the Roumanian Minister of Foreign Affairs announcing the intention of France, Germany, and Great Britain to enter into diplomatic relations with the country. On the opening of the Chambers in September, 1878, the Prince assumed the title of "Royal Highness," and on March 26, 1881, Roumania, without objection on the part of any of the Powers, assumed the style of a kingdom.

2. The constitutional organization of Bulgaria is provided for in arts. 1, 3, 4, and 7. In accordance with them an Assembly of Notables was elected December 31, 1878, and met at Tirnovo February 26, 1879. It completed the organic law of the Principality April 28, 1879, and on the following day elected Prince Alexander of Battenberg to be the first Prince of Bulgaria. The election was approved by the Porte in a firman dated July 25, 1879[1].

Arts. 13, 15–18, 20, 21, relate to the organization of Eastern Roumelia. Under them an International Commission was appointed, upon which Sir H. D. Wolff and Lord Donoughmore were the British representatives, to draft, in concert with the Porte, a statute for the government of the country. The work was to be completed in three, but actually took nine, months. The organic statute was signed by all the Commissioners on May 4, 1879, and was promulgated by the Porte in a firman dated the 17th of that month. By another firman issued on the same day Aleko Pasha was appointed, in pursuance of the treaty, with the

[1] *N. R. G.*, 2me série, v. p. 506. On the subsequent history of Bulgaria, v. infra, pp. 255–259, 264.

assent of the Powers, to be governor of Eastern Roumelia for five years[1]. The anomalous nature of his position was illustrated by the controversy which arose as to the proper head-dress, whether the Turkish fez or the Bulgarian kolpac, in which he should make his first appearance in the province entrusted to his charge. By art. 15 "the "Sultan shall have the right of providing for the defence "of the land and sea frontiers of the province by erecting "fortifications on those frontiers, and maintaining troops "there." The Porte declared its intention of not at present exercising this right, but Lord Salisbury (May 5, 1879) maintained that the Porte not only had not renounced but could not renounce it.

3. The Congress during its sitting was assisted by a Boundary Committee in tracing territorial limits, so far as they are laid down in the treaty. The working out of these limits in detail could only be performed by subsequent survey on the spot.

Shortly after the ratification of the treaty Russia urged the appointment of four Commissions, to deal respectively with the boundaries of Bulgaria, Servia, and Montenegro, and of the territory newly acquired by Russia in Asia. Lord Salisbury thought that, owing to the unsettled state of the country, it would be impossible so soon to fix the Asiatic boundary, but was ready to concur in the appointment of the other three Commissions, although, as he pointed out, only one of them had been expressly mentioned in the treaty.

The Bulgarian Commission, on which Col. Home represented Great Britain, met October 21, 1878, and adjourned December 17. It reassembled April 15, 1879, when Col. Hamley replaced Col. Home, and completed

[1] *Parl. Papers*, 1879 [2328]; *N. R. G.*, 2me série, v. pp. 79–251. On the subsequent history of Eastern Roumelia, v. infra, pp. 255–259, 264.

its sittings September 24, 1879[1]. In the first session it laid down the frontier between Silistria and Mangalia. In the second it defined Bulgaria, (1) on the Danube, (2) towards Macedonia, and (3) towards Servia, also dividing the islands.

The Eastern Roumelia Boundary Commission met Oct. 28, 1878, and adjourned Dec. 9 for the winter. It reassembled April 4, 1879, and sat for the last time Oct. 25, 1879, when it signed the Act of Delimitation from the Black Sea to Tundja[2].

The Montenegrin frontier had been agreed upon, in principle, by the Austrian and Russian Commissioners at Berlin[3], but details remained to be settled by the Delimitation Commission which met April 30, 1879, Captain Sale representing Great Britain. Spizza had been incorporated in the Austrian Empire by a law of April 15, 1879[4], and no difficulty was found by the Austrian and Montenegrin delegates in drawing the line in the neighbourhood of that town. It soon, however, became evident that difficulties would arise in other directions. In August the Albanian League presented a protest to the Commissioners, who indeed discovered that they could not carry out the directions of the treaty in drawing the line between the plain of Podgoritza and Gusinje Plava without cutting a tribe in two. They therefore suggested to the Porte an exchange of the Kuci Kraina for the Mussulman part of Gusinje Plava, and having provisionally laid down a frontier in accordance with this view, separated for the winter Sept. 8, 1879[5].

The proposed substitution, usually known as the Corti

[1] *Parl. Papers*, 1879, Turkey, No. 2; 1880, Turkey, No. 2; *N. R. G.*, 2me série, v. pp. 507–701.

[2] *Parl. Papers*, 1879, Turkey, No. 2; 1880, Turkey, No. 2; *N. R. G.*, 2me série, v. pp. 255–350.

[3] *Protoc.*, p. 138. Cf. p. 173.

[4] *Revue de Droit Internat.* xii. p. 358.

[5] *Parl. Papers*, 1880, Turkey, No. 2, p. 261; *N. R. G.*, 2me série, v. pp. 351–484.

compromise, was embodied in a Convention between the Porte and Montenegro, April 12, 1880, to be executed in ten days. The Convention was sanctioned by the Powers in a protocol of April 18[1]. It is in every one's remembrance that the arrangement failed of effect. In consequence of the neglect of the Turkish commander to give due notice that he was about to evacuate the Podgoritza plain, the forts there fell into the hands of the Albanians. The Powers, on June 11, presented to the Porte an identical note complaining of what had occurred, and about the same time it was suggested by the British Consul-General at Scutari that Dulcigno should be handed over to Montenegro in the place of Kuci Kraina. The proposal, having been accepted by Montenegro, was submitted to the Porte June 26, 1880. On July 15, the Porte suggested some modifications in the scheme, but the Powers in a collective note of August 3, insisted that either the Corti compromise or the surrender of Dulcigno should be carried out within three weeks. On August 18 the Porte accepted the proposal as to Dulcigno, with some reservations; but the place not having been given up, the combined fleets assembled at Ragusa Sept. 14, and a collective note, presented on the following day, insisted on prompt action, while making a concession to the Porte with reference to Dinosi. The negotiations which followed were marked by several sudden changes of policy on the part of the Turks. On Sept. 22 the Porte haughtily insisted on the abandonment of the naval demonstration, and Riza Pasha consequently refused to allow the Montenegrin troops to approach Dulcigno. On October 26 a collective note from the Powers produced a change of tone. A verbal promise was given that the town should be surrendered by October 3. In point of fact, it was

[1] 1880, Turkey, No. 2; 1881, Turkey, No. 1; *N. R. G.*, 2^{me} série, v. pp. 701, 703.

not till November 27 that the Montenegrins marched into Dulcigno. The allied fleet dispersed on December 5[1].

There then remained to be fixed only the section of frontier east of the Lake of Scutari, but this proved to be a matter of considerable difficulty[2].

The Servian Delimitation Commission met Oct. 23, 1878, adjourned for the winter, reassembled May 9, 1879, and finally separated August 19. The British representative was at first Major Wilson, afterwards Captain Anderson. This Commission, with the sanction of the Bulgarian Delimitation Commission, traced the frontier between Servia and Bulgaria, and then proceeded to fix the Servian frontier towards Turkey[3].

The Roumanian troops entered the Dobrudja November 2, 1878. The boundary of the new territory added to Roumania on the south of this district was, by art. 46 of the treaty, to be determined on the spot by the Bulgarian Commission, which, as already stated, accordingly undertook the work in October, and finished it December 17, 1878. All the members of the Commission, the Russian delegate only excepted, agreed that the line should begin from a point 800 yards north-east from the outworks of Silistria, the only point where a bridge could be thrown over the Danube to connect Roumania with this portion of her new acquisition. The objection to this arrangement was that it handed over to Roumania the Arab Tabia fort which commanded Silistria. This objection was answered by pointing out that under art. 52 of the treaty all the Danubian fortresses are to be dismantled[4]. While the discussion was going on, the Arab

[1] 1881, Turkey, Nos. 1, 2.

[2] This frontier was ultimately delimited by a convention of Nov. 7, 1887.

[3] The sanction of the Bulgarian Commission was given Nov. 12, 1878, and the Bulgaro-Servian frontier finished June 20, 1879. The Turko-Servian line was drawn August 18, 1879. *Parl. Papers*, 1880, Turkey, No. 2; *N. R. G.*, 2me série, vi. p. 268.

[4] *N. R. G.*, 2me série, v. pp. 517, 569.

Tabia was occupied by Roumanian troops, the Russian commander withdrawing under protest, but was afterwards evacuated by them. On July 14, 1879, Russia proposed that the question should be reconsidered by the Bulgarian Commission, and, on August 15, that it should be submitted to the Servian Commission. Great Britain declined to accede to either suggestion, but agreed to a proposal made by Russia, August 27, that the boundary should be traced by a technical commission of engineer officers, which accordingly assembled at Silistria October 27, 1879, Captain Sale representing England, and decided by six votes to one, November 9, the Russian delegate again constituting the minority, in favour of the line as originally drawn [1].

On the completion of the reports of the commissions of delimitation, the next step was that they should receive the approval of the Porte, to be afterwards followed by confirmation on the part of the Powers [2]. Till the new limits of the several territories had been thus finally settled, it was alleged to be impossible to give effect to those provisions of the treaty which relate to the proportion of the Ottoman debt to be assumed by Bulgaria, and (in respect to newly acquired territory) by Montenegro and Servia. The same difficulty stood in the way of a settlement of the amount of the Bulgarian tribute.

4. The treaty contains certain provisions with reference to the Principalities, and to the autonomous Province, which, though they exhibit some slight variations, are, in the main, matters of common form. These relate to twelve topics.

(1) Religious equality. This is stipulated for in the case of Bulgaria (art. 5), as it is with reference to the Ottoman Empire generally (62), including of course Eastern

[1] *Parl. Papers*, 1880, Turkey, No. 1, p. 29; *N. R. G.*, 2me série, vi. p. 224, in pursuance of the agreement, q. v., t. iii. p. 449.

[2] *Parl. Papers*, 1881, Turkey, No. 4.

Roumelia. It is, as we have already seen, made a condition precedent to the recognition of Montenegro (27), Servia (34), and Roumania (44).

(2) Treaties of Commerce and Navigation made by the Porte are to remain applicable to Bulgaria (8) and to Servia (37) till further arrangements are made. All treaties concluded, or to be concluded, by the Porte are to apply to Eastern Roumelia as well as to the rest of the empire. The treaty relations of Roumania and Montenegro are passed over in silence.

(3) With reference only to Bulgaria (8) and Roumania (44), it is provided that the subjects and citizens of all the Powers shall be treated on a footing of strict equality within the Principalities.

(4) With reference to Bulgaria (8), Servia (37), and Roumania (48), it is declared that no transit dues are to be levied on goods passing through those countries.

(5) Consular jurisdiction and the privileges of foreigners are maintained, till modified by consent, in Bulgaria (8), Eastern Roumelia (20), Servia (37), and Roumania (49); but it is expressly stated that "Roumania shall have power "to make conventions to determine the privileges and "attributes of consuls in regard to protection within the "Principality." Nothing is said as to consuls in Montenegro.

(6) Bulgaria (10), Servia (58), and Roumania (51) take the place of the Porte in railway undertakings affecting those countries respectively; but in Eastern Roumelia the rights and obligations of the Porte continue (21). Montenegrin railways are not mentioned.

(7) Special provision is made for the rights of Mussulman landed proprietors in Bulgaria (12), and in the territory ceded to Montenegro (30) and Servia (39).

(8) The relations of Bulgarians (12), Montenegrins (31), Servians (40), and Roumanians (50) to Ottoman law, when within the Ottoman dominions, are specially regulated.

(9) It is specially provided that Montenegro may have agents at Constantinople and elsewhere in the Ottoman Empire (31).

(10) Provision is made as to the share of the Ottoman debt to be borne by Bulgaria (9), and, in respect of territory newly annexed to them, by Montenegro (33) and Servia (42)[1].

(11) There are clauses as to property belonging to the State and to religious foundations in Bulgaria (12), Montenegro (30), and Servia (39).

(12) And, lastly, clauses as to the payment of tribute by Bulgaria (9) and as to the finances of Eastern Roumelia (18)[2].

II. Art. 25, under which Bosnia and Herzegovina are to be occupied and administered by Austria-Hungary, was acted upon even before the treaty was ratified. On July 28, 1878, Austria issued a proclamation[3], on the following day her troops crossed the Save into Bosnia, and a few days later a force entered Herzegovina from Dalmatia. The resistance collapsed towards the end of September. A law including these provinces in the Austrian customs system was passed December 20, 1879. Art. 25 declares that Austria is not desirous of undertaking the administration of the Sanjak of Novi-Bazar, but reserves the right of keeping garrisons and having military roads there. On the details of this subject Austria and Turkey reserved the right of coming to a subsequent understanding. This was done by a Convention of April 21, 1879, under which Austria agreed to give notice before sending troops into the Sanjak, and stated her intention for the present to send there only 4,000 or 5,000 men[4]. The occupation of the Sanjak by Austria in September of the same year gave rise to much angry feeling in

[1] These shares have not yet been apportioned (1898).

[2] The Bulgarian tribute has not yet been assessed. The tribute of Eastern Roumelia, assessed under its organic Statute of 1879, at $\frac{8}{10}$ of its nett revenue, is now paid by the Bulgarian Government (1898).

[3] *N. R. G.*, 2me série, iii. p. 467. [4] Ib. p. 423.

Russia, which ceased to find free expression only when Prince Bismarck's visit to Vienna was interpreted as showing that what had been done by Austria had been done with the approval of Germany.

III. The Russian frontier is advanced by the treaty both in Europe and in Asia. By art. 45, as we have already seen, Roumanian Bessarabia was restored to Russia; and by art. 58 the Porte cedes to that Power the territories of Ardahan, Kars, and Batoum, the Emperor, by art. 59, declaring it to be his intention to constitute Batoum a free port, essentially commercial[1]. The line of the new frontier, which is drawn so as to leave to Turkey the valley of Alaschkerd and the town of Bayazid, is partly indicated in art. 58, partly, by virtue of the agreement entered into, July 12, 1878, between Lord Salisbury and Count Schouvaloff, was left to be traced on the spot by a Commission consisting of a Russian, an Ottoman, and an English officer[2]. A portion of the territory thus ceded was already in Russian occupation, but Batoum had not surrendered, nor was it handed over to the Russians till September 6, 1878, after protests on the part of the population, which at one time threatened serious consequences. The clause of art. 60, under which the Porte was to cede Khotour to Persia, in accordance with the delimitation which had been proposed some years previously by a mixed Anglo-Russian Commission, was not immediately carried out[3].

IV. With reference to Greece, the thirteenth Protocol of the Congress records the opinion of the assembly that

[1] Batoum has on the contrary been strongly fortified, and the Emperor of Russia, by ukase of June 23, 1886, suppressed the freedom of the port, justifying this action by changed circumstances. *Parl. Papers*, 1886, Russia, No. 1.

[2] The work was carried to completion by Aug. 11, 1880. *Parl. Papers*, 1881, Turkey, No. 10.

[3] Not till May, 1883.

"the rectification of the Turko-Greek frontier might follow "the valley of the Salamyrias (the ancient Peneus) on the "side of the Aegean Sea, and that of the Calamas on the "side of the Ionian Sea." Under art. 24 of the treaty, the Powers, "in the event of the Porte and Greece being "unable to agree upon the rectification thus suggested, "reserve to themselves to offer their mediation to the two "parties to facilitate negotiations." Such indirectness of language is not of common occurrence in the treaty, but it is not inappropriate in an article which does not deal with any of those changes which might be looked on as the natural results of the war, but requests the Porte, in the interests of European peace, to make a gift of territory to a nation which had taken no part in the struggle. The Greek Government, at any rate, was determined that art. 24 should not remain a dead letter. Only a few days after the signature of the treaty (on July 17), it requested the Porte to appoint Commissioners for the purpose of arranging for the cession of territory. Then began a long course of dilatory diplomacy on the part of the Turks. Stimulated by a French despatch dated October 21, 1878, the Porte, on December 25, appointed Mukhtar Pasha to meet the Greek Commissioners. The conference which took place at Prévésa, from February 8 to March 18, 1879[1], led to no result[2]. A further conference at Constantinople, August 22 to November 17, was equally fruitless[3], and early in 1880 the Greek Minister was recalled from Constantinople. A new era in the negotiations dates from the appearance on the scene of Mr. Goschen as British Ambassador, in May, 1880. On June 11 following identic notes were presented to the Porte, in which it was informed that the representatives of the Powers accredited to the Emperor of Germany would

[1] *N. R. G.*, 2me série, vi. pp. 1–13. [2] Ib. pp. 1–95.
[3] Ib. p. 14.

meet at Berlin, on the 16th of the month, "in order to "decide by a majority of votes, and with the assistance of "officers possessed of the necessary technical knowledge, "the line of frontier it will be best to adopt." The Conference met and traced its line, which the Powers, in a collective note of July 15, invited both Greece and Turkey to accept. The Porte having replied, stating its objections to the proposed line, on July 26, the Powers, on August 25, addressed to it another collective note, declining to reopen the question, but expressing a readiness to consider any suggestions which the Porte might wish to offer as to the manner in which the cession should be made. About this time the Montenegrin question became prominent, and little more is heard of the Greek frontier till December, 1880, on the 18th of which month a proposal was made by France (which, proving acceptable to neither party, was withdrawn on January 17 of the following year) to the effect that the six Powers should act as final arbitrators upon the matters in dispute. On December 28 an article appeared in the *Agence Russe* suggesting that Crete instead of Janina should be ceded to Greece.

In the mean time the Greek army had been mobilized, and the nation, wrought up to a high pitch of excitement, declared that it would accept nothing less than the line of the Berlin Conference. But the policy of the Powers had undergone some modification. They were most unwilling to allow any further fighting, and having ascertained the maximum that could be gained from Turkey by merely diplomatic pressure, offered this to the Greek Government, in a collective note dated April 7, 1881, in substitution for the line as drawn by the Conference.

Greece replied on the 12th of the same month by what has been called a "shuffling acceptance," which was however doubtless expressed as clearly as it could have been without necessarily leading to an immediate change of government; and was treated by the Powers as an

acceptance, in collective notes addressed on the 19th to the Porte, and on the 20th to Greece[1].

Another month was spent in discussions on questions of detail, such as the share of the Ottoman debt which ought to be transferred to Greece in respect of Thessaly, government estates and Vakouf in the ceded territory, and guarantees for the Mussulman population there. Turkey, as usual, asked for much more than she was likely to get, but she got something, and a Convention carrying out the cession was signed by the representatives of the Powers and of the Porte at Constantinople, May 24, 1881, and ratified June 14. A subsidiary Turko-Greek Convention was signed (as provided in the principal Convention) at the same place on July 2. On July 6 the Greek troops crossed the frontier, the Delimitation Commission, mentioned in art. 1 of the Convention, at once began its labours, and section by section, under the careful supervision of military officers delegated by the Powers, in accordance with art. 3 of the Annexe to the Convention, the whole of the territory was peaceably handed over to its new masters. The final protocol as to the delimitation of the Turko-Greek frontier was signed at Constantinople, November 28, 1881; the Turks signing under reserve as to four points which they objected to surrender, viz. Karalik-Dervend, Nezeros, or Analypsis, Kritzovali, and Gounitza[2]. Greece received far less than she had hoped for, and rather less than she had been led to look upon as her due, but as much perhaps as she is likely for the present profitably to assimilate[3].

V. Arts. 52–57 of the treaty deal with the navigation of the Danube. Their effect, taken in combination with

[1] *Parl. Papers*, Greece, 1881, No. 3.

[2] The frontier, as laid down by the Commission, was however finally accepted, by a protocol signed at Tirnova, November 7, 1882.

[3] Cf. infra, pp. 265–267. On later rectifications of the Greek frontier, see infra, pp. 261–263.

those articles of the treaties of 1856 and 1871 which still govern the question, is that the Danube is divided into three sections.

i. The stream below Galatz[1], under a European Commission, upon which Roumania is never to be represented, the powers of which were to expire in 1883[2].

ii. The stream between Galatz[1] and the Iron Gates, under the care of the European Commission, "assisted by "Delegates of the Riverain States[3]."

iii. The stream above the Iron Gates, regulated by the Riverain States, viz. Austria, Bavaria, and Wurtemberg, which have treaties upon the subject.

To Austria-Hungary was confided the task of removing the obstacles to navigation caused by the Iron Gates[4], and all fortresses from the Iron Gates to the Black Sea were to be razed, and no new ones erected. Great delay has taken place in carrying out this direction. No vessel of war, except vessels of light tonnage in the service of the police and customs, are to navigate below the Iron Gates, but the "stationnaires" of the Powers may ascend as high as Galatz.

The European Commission is to draw up rules for the navigation of the stream between Galatz[1] and the Iron Gates, assisted by Riverain Delegates. This was done in June, 1881: but great difficulties have arisen as to the procedure and powers of the Commission which is to control the middle river[5].

[1] Since 1883, Ibraila.

[2] 1856, art. 16; 1871, art. 4.

[3] See art. 55 of the Treaty of Berlin.

[4] The necessary works were commenced September 15, 1890, and completed September 27, 1896.

[5] The signatory Powers of the Treaty of Berlin, by a Treaty signed at London, March 10, 1883, extended the jurisdiction of the European Commission as far as Ibraila, and prolonged its powers for twenty-one years, from April 24, 1883. *Parl. Papers*, 1883, Danube, No. 5; *N. R. G.*, 2me série, ix. p. 392; *European Concert*, pp. 233, 313.

VI. Specific engagements on the part of the Porte as to provincial government in Europe. By art. 23 of the treaty, the Porte is scrupulously to apply in Crete the organic law of 1868, with such modifications as may be considered equitable. A revised edition of this law was accordingly sanctioned by the Porte in January, 1879[1], and seems to have worked for a time satisfactorily[2].

It was further provided that similar laws, to be drawn up by special Commissions, should be introduced into other parts of Turkey in Europe, but should be submitted to the Commission for Eastern Roumelia before being put in force. The appointment of these special Commissions was urged by Sir A. Layard in a *note verbale* of June 27, 1879. Ultimately the Porte drew a Statute, following substantially that which had been prepared by the East-Roumelian Commission, and sent it to be examined by local Commissions at Adrianople, Salonica, and other places. In April, 1880, it invited the Powers to re-assemble the East-Roumelian Commission for the consideration of the Statute. The Commission met accordingly in the following month, Lord E. Fitzmaurice now representing Great Britain, and after signing an act approving of the Statute, with some modifications, adjourned *sine die*, August 23, 1880[3]. The Commission thought the Statute inapplicable to Albania, and proposed a special form of Statute for that province.

VII. By art. 61 the Porte engages to effect reforms in the provinces inhabited by Armenians. It seems that as yet the Porte has taken no serious steps towards the execution of this article; nor is its inaction in this respect

[1] This is known as the "Halepa compact." It had been laid on the table of the East-Roumelian Commission, Nov. 14, 1878, but this step was not a necessary one.

[2] The liberties granted in 1879 were materially curtailed in 1889, after the revolt of that year, which was repeated in 1896 and 1897.

[3] *Parl. Papers*, 1880, Turkey, 15, 16.

surprising, having regard to the state of its finances and the other calls upon its attention. It also seems doubtful whether the European concert can be brought to bear upon the question of Armenia. The active interest which Russia and England have shown in it hardly seems to be shared by the other Powers.

VIII. The "spontaneous declaration" on the part of the Porte as to religious liberty, contained in art. 62, probably goes no further than the theory of the Ottoman Code. The common form used several times elsewhere in the treaty is followed here; with the addition of a special clause as to the competency of witnesses. There are also special provisions as to monks and pilgrims of all nations, and as to the French protectorate of the holy places.

The Treaty of Berlin may, I think, be said to be a success. It actually works. So far as Europe is concerned, its stipulations, and even its recommendations, have been substantially carried into effect. Let us hope that some provision for the good government of the Armenians will form part of the scheme for the reform of provincial government in Asia Minor, which has been more than once announced as forthcoming. The treaty has no pretensions to finality, but it marks a well-defined stage in the disintegration of the empire of the Turks in Europe, and the redistribution of power in the Balkan peninsula.

XIII

BULGARIA, GREECE, AND THE TREATY OF BERLIN[1]

WHILE the attention of most of us has been concentrated upon questions directly affecting the authority of the Imperial Parliament and the constitution of the United Kingdom, events have been occurring in the Balkan peninsula which the existence of a European Concert has alone prevented from giving rise to a European war.

A revolution has occurred in Eastern Roumelia, Servia has carried on a short and disastrous campaign, and Greece has indulged in an effervescence of military preparation; but the danger has passed away, and the Treaty of Berlin has come through the ordeal practically unscathed.

This great treaty is sometimes spoken of in language which might suggest that it is already little more than waste paper. No one who has carefully considered the matter would employ such language. The treaty is undoubtedly destined to influence as profoundly the history of Eastern as the Treaty of Vienna (I had almost

[1] A Lecture delivered in 1886.

said, of Münster) has influenced the history of Western Europe. The recognitions of independence, the definitions of boundary, which it contains, must always be roots of title to the new States of the Balkan peninsula, whatever may be the nature of their future development. *De facto* changes, on the largest scale, will doubtless hereafter take place in the peninsula, which, so far as they shall receive the *imprimatur* of European public opinion, will be *de iure* also. But the international legitimacy of such changes, indeed their intelligibility, must always remain dependent on the decisions of the Congress of 1878.

The great work of the Congress was that it transmuted into independent States the fringe of vassal provinces which encircled, on the north, the European dominions of the Ottoman Empire. The vexed question of the *status* of Montenegro, after centuries of debate, was finally set at rest. The Home-rule which Servia had gradually acquired through seventy years of intermittent struggle was exchanged for full sovereignty. The Roumanians of Wallachia and Moldavia gained the unity for which they had been ingeniously plotting ever since the Crimean war, and entire freedom from Turkish suzerainty at the same time.

But the Turks are not left wholly without their wonted accompaniment of vassal satellites. "Uno avulso non "deficit alter." The Russian war had been largely due to the "Bulgarian atrocities," and the creation of the new autonomous Principality of Bulgaria was one of the most important conditions of the Peace of San Stefano.

Every one knows that the "great Bulgaria" as sketched in the treaty of peace, occupied, roughly speaking, the whole area between the Danube and the Aegean Sea, east of Albania, with the exception of the country about Adrianople and Constantinople. The Bulgarians were to have the ports of Varna and Burghas on the Black Sea, as

well as others on the Aegean, while the Turks, crowded down to the neighbourhood of the Sea of Marmora, would have been shut out of all land communication with their remaining European provinces, except by means of a strictly limited, and of course precarious, right of way through Bulgarian territory.

The Congress of Berlin was careful to cut into three parts this considerable region, the Government of which seemed likely to be the faithful servant of Russia. The south-western portion, where the population is indeed far from being exclusively Bulgarian, was restored to the direct control of Turkey. The portion south of the Balkans, henceforth to be known as Eastern Roumelia, was also restored to Turkey, but with safeguards for its good administration under the eyes of Europe; while the portion between the Danube and the Balkans, shorn of the Dobrudja (which was handed over to Roumania), became the new tributary Principality. The two together have about the area of Scotland and Wales, and a population about double that of Wales.

On the evacuation of those regions by the Russians in 1879, the Principality commenced its existence with the advantage of a vigorous and honest ruler in Prince Alexander of Battenberg, who however was then only twenty-two years of age, but with the drawback of a Constitution, the defects of which, as drafted at St. Petersburg, had been only partially remedied by the amendments made in it by the Constituent Assembly at Tirnova. Eastern Roumelia was fortunate not only in its first governor, Prince Vogorides, a Bulgarian Christian, since better known as Aleko Pasha, who, in pursuance of the treaty, was nominated by the Porte, with the approval of the Powers, for five years, but also in the organic statute, for the wise provisions of which it was indebted to an international Commission.

In their subsequent history, Principality and Province

have alike had to reconcile, as best they could, the conflicting claims of: (1) the new autonomy and the authority of the Sultan; (2) the Christian and Mussulman elements in the population; (3) the conservative and radical parties in politics; (4) the nationalists and the partisans of Russia. A few words upon each of these points.

(1) The questions arising out of the relation of the Principality and the Province to the Porte have been fewer than might have been expected.

Bulgaria has established its claim to correspond with the Foreign Office at Constantinople, and not with the "Bureau for the privileged Provinces."

The Principality has also hitherto avoided the payment of anything by way of tribute, or on account of its share of the Ottoman debt. Indeed the amounts so payable have not yet been ascertained. It has repudiated liability for the moneys due by the Porte to the Rustchuk-Varna Railway, but has duly entered into contracts with a view to the completion of the railway system between Belgrade and Constantinople. The Sultan has not as yet found it expedient to exercise the right conferred upon him by the treaty of garrisoning and fortifying the Balkan passes and the coast-line of Eastern Roumelia. This Province has duly paid its tribute, though since 1882 on a reduced scale.

(2) It seems that the Mussulman population has found its position so untenable as to have largely emigrated, and complaints have been made that the article allowing non-resident Mussulmans to retain their estates in Bulgaria has not been loyally carried out.

(3) The conservative party among the Bulgarians—the hellenized trading class known as the "Tchorbadjees"—as before, so after the war, has inclined rather to make the best of such liberties as they enjoyed than to agitate for complete independence. It was the bolder policy of the radical party which, by promoting insurrectionary move-

ments, was largely responsible for the "Bulgarian atrocities" and the intervention of Russia. The first Ministries, both in Bulgaria and in Eastern Roumelia, were of the Tchorbadjee class, but the party of movement, led by such men as Zankoff, Karaveloff, and Soloveikoff, soon supplanted them.

(4) The new Governments had also to conciliate the tendencies of the Russophil and nationalist parties among their subjects.

The difficulty which Prince Alexander found in acting with either of the two political parties, led him in July, 1881, to throw himself upon the support of Russia, by a *coup d'état* which suspended the Constitution, and by obtaining from a packed National Assembly what amounted practically to a dictatorship for seven years. Russian ascendency seemed now to be secured, but was lost by the arrogance of MM. Hitrovo and Jonin, successively Russian diplomatic agents at Sofia, and by the blundering impertinence of the Russian Generals Sobolef and Kaulbars, who were for some time Ministers respectively of the Interior and of War. The Prince saw that his opportunity had come for retrieving his mistake, and for putting himself at the head of the growing patriotic party. On September 17, 1883, he suddenly announced his intention to restore constitutional government; nationalist Ministers were appointed; and the estrangement between the Prince and Russia, of which so many indications have lately been given, had already commenced.

A not dissimilar conflict had been going on in Eastern Roumelia, but with different results. In 1883 Russia requested Aleko Pasha to allow the erection of a Russian so-called monastery in the Shipka Pass, to issue to the Roumelian militia 80,000 rifles of the pattern used in the Russian army, and to accept a Russian general as chief of his staff. Aleko's refusal to comply with these requests, as beyond his competence, led to a diplomatic coolness

between his Government and that of St. Petersburg, and to steps being taken by Russia which prevented his reappointment as governor, on the expiration of the five years for which he had been originally nominated. He was succeeded in 1884 by M. Crestovich, officially described as Gavril Pasha, a Bulgarian who had been educated at Paris, and was supposed to be devoted to his Russian patrons.

In September, 1885, the position of affairs was therefore as follows. In Bulgaria the Prince was in the bad graces of Russia, and was governing with the help of a nationalist and radical ministry.

In Eastern Roumelia the national feeling was daily increasing in strength, in spite of the pro-Russian sympathies of the Governor-General. On the 18th of that month the events occurred which took every European capital by surprise.

Gavril Pasha was awakened between 3 and 4 in the morning, and informed that his guard had been gained over by the Bulgarian Major Nikolaieff, and that the palace was surrounded by armed peasants and disaffected militia. He was shortly afterwards told to consider himself a prisoner, and was taken in his own carriage to a neighbouring village, where he was kept under arrest. In the meantime, M. Stransky, as the head of the provisional Government, announced to the militia the union of the two Bulgarias, and an invitation was sent to Prince Alexander to come to Philippopolis. It was promptly accepted, and two days later the Prince entered the Province, issuing a manifesto as "by the grace of God, and "by the will of the people, Prince of Northern and Southern "Bulgaria."

On the 21st Alexander telegraphed to the Sultan protesting loyalty, and asking his sanction for the union. On the 24th the Bulgarian Assembly voted the union. The Porte immediately announced to the Powers its

intention of sending troops into Eastern Roumelia in pursuance of art. 15 of the Treaty of Berlin.

These startling events pleased none of the Great Powers. Their ambassadors at Constantinople assembled in conference there on October 5, and on the 13th signed a declaration, which was presented in a collective Note immediately to the Porte and to the Bulgarian Government, and shortly afterwards to the Governments of Servia and Greece. A more formal Conference met on November 5, by invitation of the Porte. The British representative, Sir W. White, entered it with instructions not to oppose the union of Eastern Roumelia to Bulgaria[1], but the Powers were as yet by no means of the same mind upon the question, and the feeling of Russia was indicated by an order, which appeared on the same day in the *Gazette* of St. Petersburg, excluding Prince Alexander from the rank which he had enjoyed in the Russian army.

A further danger to the new state of things in Bulgaria arose from the action of Servia. She declared war on November 14, and Prince Alexander in this hour of need turned to his suzerain, assured the Sultan of his complete loyalty, asked for the aid of Turkish troops, and ordered the evacuation of Eastern Roumelia by his own forces.

After the brilliant and unexpected success of the Bulgarian arms in the fortnight's war with Servia (of which more hereafter), the Prince held somewhat different language. It had been arranged that an Imperial Commissioner, accompanied by delegates of the Powers, should visit Eastern Roumelia to arrange for its pacification.

[1] Lord Salisbury to Sir W. White: "It is evident that the leading "cause which has induced several of the Powers to press for a return "to the *status quo ante* is the attitude of the smaller surrounding "States. The object to be attained by re-severing Bulgaria and "Eastern Roumelia is to prevent Greece and Servia from breaking "the peace. The victory will therefore be with those two States if the "*status quo* is to be restored." *Parl. Papers*, 1886, Turkey, No. 1, p. 198

Two officials were accordingly sent by the Porte to proclaim an amnesty, and to prepare the way for the Commissioner, but, though respectfully received, they reported against the immediate despatch of that functionary. In January, 1886, M. Zankoff was sent to Constantinople on behalf of Bulgaria, and on February 1 signed an agreement with the Porte, to the effect that Alexander should be appointed Governor-General of Eastern Roumelia for five years, which term might be renewed from time to time.

In return, the Prince undertook to render military aid to the Sultan in time of war, and that certain villages in the Rhodope district should be restored to the direct government of Turkey. This agreement, which was duly confirmed by an Imperial Iradé, and communicated to the Powers, was however by no means satisfactory to Russia, and in deference to her wishes was much modified before it was submitted to a conference of ambassadors with a view to its receiving the sanction of Europe. The more nearly the arrangement approximated to the views of the Czar the less it satisfied Prince Alexander, but the Conference, which but for the protests of the latter was to have met on March 13, met actually on April 5 and signed a protocol approving of the convention in its modified form. Prince Alexander was to be nominated Governor-General of Eastern Roumelia for five years only, the question of his reappointment being left to be regulated by art. 17 of the Treaty of Berlin, and a Commission was to be appointed to revise the organic statute of Eastern Roumelia [1], which in the meantime was to be governed by the Prince "according to the forms required by existing "circumstances." While this arrangement remained in

[1] The labours of this Commission, which duly met at Sofia, Aug. 9, 1886, were interrupted by the subsequent events of the year, and it was not till May 27, 1893, that the Organic Law of Bulgaria was so modified as to practically incorporate Eastern Roumelia into the Principality.

force, the Rhodope villages were to be restored to the direct control of the Sultan, who in return waived the right of garrisoning the frontiers of Eastern Roumelia conferred upon him by art. 15 of the Treaty of Berlin.

On April 10 the protocol was presented to the Prince on behalf of the Porte, and at the same time the representatives of the Powers at Sofia presented a collective Note upon the subject to the Bulgarian Government. The Prince on the same day telegraphed to the Grand Vizier his acceptance of the arrangement, subject to the assent of his subjects, in order to ascertain which he issued decrees ordering the election on May 23 of a National Assembly of Deputies from North and South Bulgaria respectively. On April 25, 1886, he received the Sultan's firman conferring on him the government of East Roumelia in conformity with the stipulations of the Treaty of Berlin, and with the recent protocol[1].

After following thus far the main story of the revolution in Eastern Roumelia, let us glance for a moment at its subsidiary consequences—the jealousy of Servia and the wrath of the Greeks.

The military history of Servia has of late not been a glorious one. In June, 1876, she declared war against Turkey, but was so badly beaten as to have to sue for peace in February, 1877. In December of the same year

[1] It may be convenient here to summarize the subsequent history of the Principality and the Province. On Aug. 10, 1886, Prince Alexander was, in consequence of Russian intrigues, carried forcibly beyond the frontier; and though he returned in triumph on the 29th, was obliged to abdicate definitively on Sept. 7. On July 7, 1887, Prince Ferdinand of Saxe-Coburg and Gotha was elected Prince of Bulgaria, and entered upon his functions in the following month. It was, however, not till March 14, 1896, that his election was confirmed by the Porte, with the assent of the Powers, in accordance with the Treaty of Berlin, and he was at the same time duly nominated to be Governor-General of Eastern Roumelia.

she again declared war, sheltering herself behind the victorious armies of Russia, and was rewarded by a stipulation for her independence in the Treaty of San Stefano.

As early as September 28, 1885, the Servian Foreign Minister told Mr. Wyndham that Servia must have compensation, otherwise "a naked man jumps far." The attitude of the new kingdom towards the Roumelian revolution was defined in a Note presented on its behalf to the Great Powers in October. The sentiments expressed in this Note were soon translated into action. On November 14 Servia declared war against Bulgaria, and King Milan crossed the frontier with his troops. A proclamation was on the same day posted on the walls of Belgrade, and a justificatory Note was handed to the representatives of the Great Powers.

The result of the war is fresh in every one's recollection. The Servians, at first victorious, were afterwards driven back at all points, thanks to the dogged bravery of the Bulgarians and the admirable leadership of their Prince, so that an intimation that the Great Powers were prepared by collective action to stop the hostilities and bloodshed between the Servians and Bulgarians was received with gratitude by the Cabinet at Belgrade. Prince Alexander, in reply to a similar Note simultaneously addressed to his Government, insisted on making peace on Servian territory, and continued his advance, till checked at Pirot by an *ultimatum* from Austria. An armistice was signed on November 27, subsequently extended till March 1, and a neutral zone was marked out between the opposing armies by an international military Commission in December. Early in February, 1886, delegates from the Porte, Bulgaria, and Servia arrived at Bucharest, and on March 3 signed there a treaty of peace, the ratifications of which were exchanged on the 19th of the same month. It consists of but one article.

Yet another result of the revolution in Eastern Roumelia remains to be considered. The long-smouldering discontent of Greece burst into fresh flame when the consolidation of Bulgaria seemed to relegate for ever to dreamland the hope of a restored Byzantine empire.

Once more mobs clamoured for increase of territory—for Epirus, perhaps for Macedonia—by way of compensation for the union of the two Bulgarias. The army was mobilized, and the Ministry had little choice but to formulate the cry of the people. The only sobering influence was that derived from the action of the Powers, whose representatives at Athens followed up informal remonstrances by a series of collective Notes, one of which, dated January 11, 1886, strongly urged demobilization, while another, of the 25th of the same month, stated that a naval attack on the part of Greece against Turkey would not be permitted. This intimation was supported by the assembling, early in February, of an international fleet in Suda Bay, under the supreme command of the Duke of Edinburgh. The Delyannis Government remained firm, and was supported by a vote of confidence, passed in the Chamber, after a seven days' debate, on April 11. On the 14th the Powers, in a collective Note informing the Cabinet of Athens of the settlement of the Bulgarian question, again recommended demobilization; and with good reason,—for while the combined fleets were keeping the peace of the seas, there was a danger that hostilities might at any moment break out on land. The Greek and Turkish armies were face to face on the frontier, where on April 21 their outposts, in consequence apparently of some mistake, were actually firing upon one another. The Note of the 14th having produced as little effect as its predecessors, stronger measures were at length decided upon. Vessels of the combined fleets appeared in the anchorages of Phalerum and the Piraeus, and after the failure of an attempt at

mediation on the part of the French, the representatives of the other five Powers handed in to the Delyannis Government on the evening of the 26th an *ultimatum*, insisting upon an assurance being given within a week that the Hellenic army would within the shortest time be placed on a peace footing. It was understood that non-compliance with this demand would lead to a blockade of the Greek ports.

In a reply telegraphed to the Powers on April 29, M. Delyannis begged to refer to the communication which, before receiving the *ultimatum* of the Powers, he had made to their representatives at Athens, to the effect that, "yielding to the advice of France, Greece would defer to "the wishes of the Great Powers, in not disturbing the "peace, and that consequently the Greek army would not "be kept up to its present effective strength, and that "reductions would be undertaken gradually, and with "the prudence required by so important an operation." M. Delyannis expressed a hope that, in pursuance of the above statement, the Powers would see that their collective Note had no longer any object. This reply appearing unsatisfactory to the Powers, their representatives on May 6 presented a fresh Note to the Athenian Cabinet, insisting on receiving more definite assurances in the course of the day.

M. Delyannis declining to do more than refer to his previous Note, the Ministers of Great Britain, Austria, Germany, Italy, and Turkey left Athens on the 7th (the Russian Minister was at the time absent from his post), and on the 8th the chargés-d'affaires of all the Powers, with the exception of France, delivered to the Greek Government a collective Note, announcing a blockade of the coasts of Greece against vessels sailing under the Greek flag. M. Delyannis thereupon resigned, and on May 20 the Chamber, which had been convoked by an *interim* Ministry, elected as its President M. Stefano-

poulos, by 138 votes against 78 given for M. Delyannis. So distinct a censure upon the policy of the ex-Prime Minister made possible the immediate formation of a Ministry under M. Tricoupis. On the 24th a decree was issued for the demobilization of 50,000 men, and for the withdrawal from the frontier of all but the ordinary garrisons. It was barely in time to prevent war in earnest with Turkey, for fighting had already been going on for several days between the outposts of the armies which had so long been watching one another upon the northern frontier. On June 7 the blockade was raised[1].

This chronicle of events has no pretensions to be a history. For that the time has not yet arrived.

Some day we may hope to know with certainty what forces have been at work other than those apparent upon the surface of those occurrences which we have been watching from day to day. We may learn what Austria has had to say to the luckless enterprise of Servia; how it has come to pass that the diplomacy of Russia, usually so astute, has so handled the Bulgarian revolution as greatly to diminish the influence of the Czar in the affairs of the Principality; under what malign inspiration Greece persevered so long in a course of action which has most pained those who were her best friends. We shall, at any rate, have no reason to be ashamed of the policy of our own country, which, alike under Lord Salisbury and Lord Rosebery, has been characterized, far more than it usually is, by skilful management and by continuity of purpose.

All that can be here attempted is to direct attention to two questions:—

I. The relations of the recent occurrences to the Treaty of Berlin.

[1] v. supra, p. 138.

II. The part played in these occurrences by the "European Concert."

I. The provisions of the treaty which have any bearing upon our present inquiry deal with geographical boundaries and constitutional law.

1. The revolution in Eastern Roumelia had in view no question of boundary. It was a claim that the Province should, by union with Bulgaria, acquire a constitutional position, with reference to the Porte and to its internal organization, identical with that enjoyed by that Principality. This claim has been only partially allowed. The Prince of Bulgaria is indeed now at the head of the Roumelian executive, but he is this as the Porte's Governor-General, appointed in pursuance of, and under the limitations provided by, art. 17 of the Treaty of Berlin. On the other hand, the "organic statute" of the Province is to be revised, no doubt with a view to assimilating it to the Bulgarian Constitution, and to establishing a common legislature and a common administrative system for the two Bulgarias[1]. Further, the Sultan surrenders, during the continuance of the arrangement, the right, which he has never exercised, given him by art. 15 of the treaty, of "providing for the defence of the land and sea frontiers "of the Province, by erecting fortifications on those fron- "tiers, and maintaining troops there." This variation in the constitutional provisions of the treaty is by way of compensation for a variation in its boundary provisions, by which the Mussulman villages in the canton of Kirdjali and in the Rhodope region are to be detached from Eastern Roumelia, and restored to the direct government of the Porte.

2. The aggression of Servia was wholly out of relation to the treaty, except in so far as her pretensions to be a guardian of the *status quo* established by the Great

[1] v. supra, p. 258, note 1.

Powers in the Balkan peninsula may be admitted as excusing the unfortunate exploit upon which she embarked against their advice.

3. We have heard a good deal of the claims of Greece under the Treaty of Berlin. We have been told that, by "that most sacred of compacts," a promise was made by Europe, though, as is admitted, not a "definite, legally "binding promise," for the enlargement of the boundaries of Greece, so as to take in not only Thessaly but also Epirus. It is perhaps now common knowledge that the treaty contains no promise whatever upon the subject, definite or indefinite.

By the thirteenth Protocol of Berlin a resolution, moved by the representative of France, was adopted by all the Powers, with the exception of the Porte, to the effect that: "the Congress invites the Sublime Porte "to arrange with Greece for a rectification of frontiers "in Thessaly and Epirus, and is of opinion that this "rectification might follow the valley of the Salamyrias "(the ancient Peneus) on the side of the Aegean Sea, "that of the Calamas on the side of the Ionian Sea."

Art. 24 of the Treaty of Berlin merely states that "in "the event of the Sublime Porte and Greece being unable "to agree upon the rectification of frontier suggested in "the protocol," the Powers "reserve to themselves to "offer their mediation to the two parties to facilitate "negotiations."

The parties *were* unable to agree, and the Powers, after various unsuccessful attempts to find an acceptable compromise, determined at one time to take the matter into their own hands, and to fix the desirable boundary without reference to the wishes either of Turkey or of Greece. A line was accordingly drawn by the Ambassadors at Berlin, and its acceptance was urged in a Collective Note of July 15, 1880, both upon the Porte and upon the Cabinet of Athens. Like the line of the Berlin Protocol,

it began on the west with the course of the Calamas, but took a northerly sweep, so as to leave both Janina and Metzovo to Greece, afterwards following the crests of the mountains till it struck the Aegean at Olympus. Turkey from the first refused to consider this line, and it was almost immediately abandoned by its authors. Germany and Austria had never been prepared to impose it by force, national feeling in France declared itself in the same sense, and even the English Government found reason to suspect that it had been drawn without sufficient care for the susceptibilities of Albania. In the following year, however, the mediation contemplated by the Treaty of Berlin was successfully exercised. Terms were suggested which Greece accepted with expressions of gratitude, and were embodied in a Convention, signed on May 24, 1881, between the six Powers of the one part and the Porte of the other. Speaking generally, Thessaly was surrendered to Greece, and that more completely than had been proposed by the Congress of Berlin. On the other hand, Epirus remained Turkish. Greece of course gained Volo, but special arrangements were necessary with reference to the Gulf of Arta. Punta, which had been reserved to Turkey in 1832, was given to Greece, but its fortifications were to be razed within three months, as were those of Prevesa, on the Turkish side of the entrance. The navigation of the gulf was to be free[1].

The operative portions of this Convention were followed verbatim in a Convention between Turkey and Greece, signed July 2, 1881; and the territory specified in it was peaceably and loyally handed over within the time appointed for its transfer. Whereupon the operation of art. 24 of the Treaty of Berlin was finally exhausted.

As in the case of Servia, therefore, so also in the case

[1] *N. R. G.*, 2me série, vi. p. 753; *European Question*, p. 60; supra, p. 244.

of Greece, recent events have been wholly out of relation to any rights conferred by the Treaty of Berlin. It is fair to the Greek Government to say that its despatches have not ventured to set up any such rights, but have insisted mainly upon the menace to the aspirations of the Hellenic race caused by the increased importance of Bulgaria.

II. A few words in conclusion upon the part played in the events which we have been considering by the "European Concert," in other words, by the combined action of the Great Powers.

Notice, in the first place, that this concert has been maintained throughout a series of emergencies which put a severe strain on the interests and traditional policy of its individual members, one after another. England saw the Balkan frontier, to preserve which she had nearly broken up the Congress of Berlin, practically obliterated; Russia found her spoilt child, Bulgaria, struggling to escape from leading-strings; Austria was tempted to intervene on behalf of her *protégé*, Servia; France was anxious to pose as the true friend of Greece;—but the general interest in the maintenance of peace has prevailed against the inclination to divergent policies, with the result which we see.

Under the advice of the Powers, the Porte has throughout acted with great self-restraint and moderation. The reasonable wishes of Eastern Roumelia for a union with Bulgaria, which is now no longer likely to augment the influence of Russia in the peninsula, have been gratified, while Prince Alexander has been, on the other hand, shielded against the anger of the Czar, and, on the other, strengthened against the discontent of the extremists among his new subjects[1].

The Servian war, it is true, was not prevented, but it

[1] But see supra, p. 259, note 1.

was brought to a close by the good offices of the Powers, under the supervision of an international military Commission. Thus much was achieved by peaceful diplomacy. Greece declined to yield to reason unsupported by force; but, to the surprise doubtless of M. Delyannis, force was actually forthcoming, and has accomplished its object.

I venture to assert that we have been witnesses of a triumph of right reason—not of an unjustifiable dictation by strong to weak Powers, but of a desirable prevalence of great interests over small. This consummation has been attained by that more or less perfectly harmonious action of the six great Western Powers which is called the "European Concert," the uniform pressure of which, so long as it can be brought to bear, has taken the place of those shifting combinations for the preservation of the "balance of power," which have been so fruitful a cause of great wars.

On the authority of the Great Powers, I will say no more than that its moral sanction is derived from that general acquiescence on the part of all civilized States which is the very breath of life of International Law. If any one State may properly go to war for the protection of what it considers its vital interests, how much more properly may the six States which between them wield the force of Europe exert that giant's force to peacefully prevent a common danger?

The interests of Nationality stand high in the scale of interests which the politician is bound to respect, and no arrangement which cynically disregards them, on a large scale, can hope for perpetuity. But it by no means follows that every claim of elective affinity is to be freely indulged:—that a wise statesman will go all lengths with the aspirations of a *Servia*, or even a *Grecia irredenta*, at the risk of unchaining the Titanic rivalries of great Empires.

The story of the last few months not inaptly recalls

Virgil's fine description of angry swarms of bees hastening to battle, and his suggested remedy for the pigmy turmoil :—

> Hi motus animorum atque haec certamina tanta
> Pulveris exigui iactu compressa quiescunt.

The world is to be congratulated if Collective Notes and a Pacific Blockade have produced the effect of the poet's handful of dust upon the passions of the minor States of the Balkan peninsula.

XIV

THE INTERNATIONAL POSITION OF THE SUEZ CANAL[1]

But little knowledge is displayed in ordinary speech and writing of the true international position of the Suez Canal, and but slight appreciation of the precise meaning of the "neutrality" with which, according to some, that great work is already invested, or which, according to others, it is desirable that it should enjoy. It may, therefore, be worth while to state shortly and plainly how matters really stand as to the Canal, and to inquire what is meant by saying that it is, or that it ought to be, "neutralized."

I shall begin by an examination of the meaning of the term "neutral" and its compounds. The word, though not the idea which it conveys, is of comparatively modern origin. It is of course no new thing, though more common in recent than in remoter times, that a State should keep clear of the quarrels of its neighbours, remaining on friendly terms with both sides in a controversy with which it has no concern. States occupying this position were described in classical Latin as "medii,"

[1] A Lecture delivered in 1883: *Fortnightly Review*, July, 1883.

or "medii amici," and continued to be so described down to the time of Gentili and Grotius[1]. The earliest trace of the term "neutralis," in this sense, is probably its occurrence in the Chronicle of Theodoric Engelhusen, written in 1426. In 1620 Neumayer von Ramsla published the first work, *Von der Neutralität*[2]. Sir W. Temple, later in the seventeenth century, speaks of "neutrals"; and this term, though not used by Bynkershoek, was well established when Hübner, in 1759, published his celebrated work *De la Saisie des Bâtiments neutres.* Nations taking no part in a war were called "neutrals"; and their condition was said to be one of "neutrality." The next step was to apply the term "neutral" to the "flag" of a nation so situated, to its "territory," to its "ships," to its "commerce," and to its "subjects." So far "neutrality" is always the correlative of "belligerency." A State is neutral which chooses to take no part in a war, and persons and property are called neutral which belong to a State occupying this position. The term has in recent times received a larger application. A condition of neutrality, or one resembling it, has been created, as it were, artificially, and the process has been called "neutralization."

I. States have been permanently neutralized by convention. Not only is it preordained that such States are to abstain from taking part in a war into which their neighbours may enter, but it is also prearranged that such States are not to become principals in a war. By way of compensation for this restriction on their freedom of action, their immunity from attack is guaranteed by their neighbours, for whose collective interests such an arrangement is perceived to be on the whole expedient.

[1] "Le voce *neutralis, neutralitas*, da' giureconsulti moderni usate, "prese in questo senso sono barbare." Galiani, *Dei Doveri dei Principi Neutrali*, 1782.

[2] *Von der Neutralität und Assistenz: oder Unpartheyligkeit und Partheyligkeit in Kriegszeiten.* Erfurt, 1620.

As early as 1803 France promised constantly to employ her good offices to procure the neutrality of Switzerland, "pour procurer à la Suisse la neutralité"; and by a declaration confirmed by the Treaty of Vienna, art. 84, it was recited that the European Powers acknowledge "that the "general interest demands that the Helvetic State should "enjoy the advantage of a perpetual neutrality"; and such a neutrality was guaranteed to it accordingly. The ninety-second article, confirmed by the Treaty of Paris, 1815, art. 3, and the Treaty of Turin, 1860, art. 2, extended the neutrality of Switzerland to portions of Savoy.

By the treaties of 1831 and 1839 Belgium was recognized as "an independent and perpetually neutral State, "bound to observe the same neutrality with reference to "other States." It will be remembered that, at the outbreak of the war of 1870, England made treaties with France and Prussia respectively with a view to further securing the neutrality of Belgium. By the treaty of March 29, 1864, art. 2—

> The Courts of Great Britain, France, and Russia, in their character of guaranteeing Powers of Greece, declare, with the assent of the Courts of Austria and Prussia, that the islands of Corfu and Paxo, as well as their dependencies, shall after their union to the Hellenic kingdom enjoy the advantages of perpetual neutrality. His Majesty the King of the Hellenes engages on his part to maintain such neutrality.

Luxembourg was similarly neutralized in 1867; and we hear something just now of a movement for "neutralizing" the Scandinavian kingdoms, although the result of recent discussions has been to throw considerable doubt upon the utility of conventions of naturalization and guarantee.

II. When persons, things, and places, though in fact belonging to a belligerent State, are invested with immunities to which, as so belonging, they would not be entitled, they are said to be "neutralized."

This use of the term is, I think, modern, perhaps not earlier than the title of a book published in 1861 by

Dr. Palasciano, *La Neutralità dei Feriti in Tempo di Guerra*, suggested by the sufferings of the wounded in the campaign of 1859. The discussion thus commenced led, in 1864, to the signature of the Geneva Convention, to which almost every civilized nation is now a party. By it, surgeons, the wounded, and hospitals are "recog-"nized as neutral" ("reconnus neutres," "participera au "bénéfice de la neutralité").

The supplementary convention of 1868, which has not been ratified, purports similarly to neutralize ships and crews solely engaged in the relief of the wounded [1]. The Act for the navigation of the Danube, made in 1865 by the European Commission, and confirmed by the Conference of the Powers held at Paris in the following year, declares that the staff and works of the Commission are to enjoy the benefit of neutrality. It has been proposed to extend a similar protection to submarine telegraph cables, but the draft convention to this effect, which was prepared at a Conference held at Paris in 1882, upon the invitation of the French Government, has not yet been adopted by the Powers [2]. In 1865 the Sultan of Morocco entered into a convention for the construction of a lighthouse on Cape Spartel. The contracting Powers engage to respect the neutrality of the lighthouse, and to continue their payments towards its support, even in case of their being at war with Morocco.

By a treaty made in 1846 with New Granada, now Columbia, the United States guaranteed "the full

[1] During the war of 1898 between the United States and Spain, both belligerents agreed on the suggestion of the Government of Switzerland to recognize and carry into execution the provisions as to maritime warfare of the Second Convention of Geneva.

[2] A general convention for the protection of submarine cables was indeed signed at Paris, March 14, 1884, but its operation is, by art. 15, expressly limited to time of peace. See the present writer in the *Journal du Droit International Privé* (ed. Clunet), 1898, p. 648.

"neutrality" of the Isthmus of Panama, with a view to the freedom from interruption of the traffic across it[1]. A treaty to the same effect was made in 1870. Between these two dates, in 1850, the United States concluded the Clayton-Bulwer treaty with Great Britain. By the second article of this treaty the ships of the two Powers passing through a canal to be made through the isthmus are to be exempt from blockade or capture should the Powers be at war. By article 5 the two Powers promise to protect the canal, "and to guarantee its neutrality, so that the canal "shall be ever open and free." By article 8 their protection is conditional upon their approval of the tolls levied by the territorial Power, and upon the impartial admission of their ships. They are to make conventions with the Central American States in order to carry out the objects of the treaty, and will request the adhesion of other States. It will be remembered that the United States in 1882 gave notice that, owing to change of circumstances, and especially to the development of their trade on the Pacific coast, they could not consent to remain bound by the treaty. During the negotiations at Vienna in 1855, Austria proposed that the Delta of the Danube should be "neu-"tralized," and its mouths managed by a "Syndicat Européen." A similar suggestion was made by the same Power at the Congress of Berlin with reference to the whole course of the river below the Iron Gates; but neither by the Treaty of Paris nor by that of Berlin has the Danube been "neutralized."

III. The term "neutralization" was used in a very extended meaning with reference to the Black Sea in the Treaty of Paris. It seems there to be a euphemism, employed to render less unpalatable a restriction on the sovereign rights of Russia. The term was thus used in the abortive negotiations which took place at Vienna in

[1] Dec. 12, art. 35, 1, ratified June 10, 1848. Martens, *N. R. G.* xiii. p. 653.

1855. Lord Clarendon, in a despatch of April 3, writes: "Afin de donner suite à la neutralisation de la mer noire, "M. Drouyn de Lhuys a proposé," &c. But it was not till after the fall of Sebastopol that Russia could be persuaded to assent to the suggested limitation of her naval power. By article 11 of the Treaty of Paris—

> The Black Sea is neutralized. Its waters and ports, thrown open to the mercantile marine of every nation, are formally and in perpetuity interdicted to the flag of war of either of the Powers possessing its coasts, or of any other Power.

By article 13, "the Black Sea being thus neutralized," neither Russia nor Turkey are to establish or maintain upon its coasts any military-maritime arsenal. A similar agreement had been long before entered into between the United States and Great Britain, when they "reci- "procally interdicted to themselves the right of letting "appear their military flag in any of the lakes which wash "the two Riverain States." But such an arrangement was in 1856 for the first time described as "neutralization," and was no doubt improperly so described.

"To neutralize" should mean "to bestow by conven- "tion a neutral character upon States, persons, and things "which would or might otherwise bear a belligerent "character." The term, as thus defined, may well be employed to describe what has been done with reference to Belgium and Switzerland, or with reference to hospitals and surgeons. It is undescriptive of such limitations upon the sovereign rights of States as were imposed by the Treaty of Paris.

In which, if any, of the senses of the word can it be said that the Suez Canal is, or that it ought to be, "neutralized"?

I. But first of all, what is the international character of the Canal, apart from convention? What, in other

words, is its position according to the common law of nations? The question is not free from difficulty, because the Canal is a novel triumph of engineering science; and International Law, which is the product of custom and agreement, can only follow, without attempting to anticipate, the course of events. Analogy must therefore be our guide in ascertaining the rules which are applicable to the case before us, after stripping it of non-essentials. The Canal is a narrow navigable trench, wholly within the territory of one Power, and connecting two open seas. Other circumstances with which the question may seem to be complicated may, from the point of view of International Law, be disregarded. We are, for instance, absolved from considering (1) the fact that the territorial sovereignty of Egypt is shared in a somewhat abnormal manner between the Khedive and the Porte; (2) the fact that the Western Powers have played an important part on the one hand in giving to Egypt its *quasi* independence, and on the other hand in maintaining the Ottoman authority in Europe; or (3) the fact that the Canal has been constructed by a company most of the shares in which are held by foreigners. All these circumstances may have great weight in determining the policy of the Powers. They are irrelevant to the rights of the various nations interested. Although the sovereignty of Egypt is shared between the Sultan and the Khedive, there is no doubt that between them these two Powers do, in theory at any rate, possess the sovereignty of the country. Although the Western Powers have had a good deal to say to the delegation of much of the Ottoman authority in Egypt, they have made no convention in derogation of that authority as so delegated; and the rights of intervention which may be exercised by any of the Western Governments for the protection of such of their subjects as are shareholders in the Canal Company, are no greater than might be claimed by those Governments for the protection of their

subjects in carrying out any other lucrative enterprise under a concession from the territorial Power.

We may next, I think, go a step farther, and dismiss from present consideration the artificial character of the Canal. The right of the territorial Power to destroy a channel may perhaps be affected by the circumstance that it has been artificially made, but so long as a channel so made continues to be navigable its character can with difficulty be distinguished from that of a natural channel[1].

The characteristics, therefore, of the Suez Canal are those of a narrow strait wholly within the territory of one Power and connecting two open seas. They are those of the Dardanelles, apart from the fact that the Black Sea is not an "open" sea in the fullest sense, and irrespectively of the confirmation given by treaties to the prescriptive "ancient rule" of the Ottoman Empire, which closes those straits in time of peace to foreign ships of war. Without any such qualifications, the Canal may be compared with the Solent; but a still closer parallel may be suggested. When the Teutonic tribes, whom we are forbidden by modern research to call "Anglo-Saxon," were finding a new home in this country, they reached the Thames, we are told, without rounding the North Foreland. A shorter and safer course was open to them. After an easy crossing, they found themselves in the haven of Richborough, or Pegwell Bay, and thence sailed straight on through Kent by the wide channel formed by the two branches of the Stour, or Wantsum, which then separated the Isle of Thanet from the rest of the county, till their galleys passed out into salt water again at Reculver. If this channel were now restored and deepened, so as to admit the passage of the steamers

[1] For some criticisms upon this view, see *Essays on some disputed Questions in Modern International Law*, by Professor T. J. Lawrence, Cambridge, 1884.

of the Peninsular and Oriental Company, its international character, as uniting the North Sea and the English Channel, would precisely resemble that of the Suez Canal, as uniting the Mediterranean and the Red Sea.

It might be supposed that the rules as to such channels are well established, but this is by no means the case. The conflicting claims of territorial jurisdiction, of the interests of commerce, of belligerent need, and of the security of neutrals are far from having been reconciled. The diplomatic discussions which have any bearing upon the subject are few[1], and their bearing is remote. The writers of text-books give no certain sound, and are swayed by national or personal considerations. It is, therefore, with some diffidence that I venture to summarize as follows the rules applicable to narrow straits between open seas.

In time of peace the territorial Power is, according to modern usage, obliged to allow "innocent passage," under reasonable conditions as to tolls and the like, to the vessels of other Powers. Whether the passage of ships of war would be "innocent" is a question of some doubt, but should probably be answered in the affirmative.

In time of war the territorial Power, if belligerent, may of course deal with the ships of the enemy as it pleases. It will endeavour to capture them, be they public or private, within the straits as elsewhere. The enemy will similarly exercise his belligerent rights within the straits as well as outside of them. Should the territorial Power be neutral, the channel, as neutral territorial water, will probably be open, as in time of peace, for the innocent passage of all ships, public as well as private, although it has been suggested that the territorial Power, if neutral, might be called upon, as such, by either belligerent to

[1] Those, for instance, with reference to the opening of the Scheldt, to the navigation of the Mississippi, and to the recognition of the ancient rule as to the Dardanelles.

close the channel to the warships of the other[1]. The straits will be, of course, closed to belligerent operations, the occurrence of which within them the territorial Power is not only entitled, but obliged, to prevent.

II. Has the Canal been in any sense so neutralized as to alter its characteristics as they exist at common law?

Language was last year used by M. de Lesseps which might lead one to suppose that this was the case. On July 8 he informed Lord Lyons that he had telegraphed to the agent of the company in Egypt to the effect that "any warlike act or demonstration is prohibited in the "Canal or at its entrances; that its neutrality had been "proclaimed by the firman of concession, and had been "recognized and given effect to during the last two wars— "that between France and Germany and that between "Russia and Turkey[2]."

On August 5 the Conseil d'Administration resolved that the Khedive had no right to modify the conditions of the concession without the Sultan's consent; and, even with such consent, "could not modify the solemn engagement "which had been contracted with the whole world in "declaring the neutrality of the Suez Canal."

Lastly, M. Victor de Lesseps had an interview with Admiral Hewett, and reports with some simplicity that the admiral, in the kindest manner, promised to inform the British Government of the arguments which had been addressed to him against the entrance of the British ships and troops into the Canal. What are the facts upon which M. de Lesseps and his friends found their statement that the Canal is "neutralized"? They can point to nothing better than the fourteenth article of the Act of Concession, signed by the Viceroy on January 5, 1856,

[1] E.g. by M. Renault in articles contributed to *La Loi*, August, 1882.

[2] *Parl. Papers*, 1882, Egypt, No. 17, pp. 301, 313, 324, 330.

and confirmed by the Sultan. The article is expressed as follows:—

> We solemnly declare, for us and our successors, subject to the ratification of his Imperial Majesty the Sultan, the Grand Maritime Canal from Suez to Pelusium, and its dependent ports, open for ever, *as neutral passages* to all ships of commerce passing from one sea to the other, without any distinction, exclusion, or preference of persons or nationalities, on payment of the dues and compliance with the regulations established by the concessionary Universal Company for the use of the said Canal and its dependencies.

The next article provides that—

> In virtue of the principle laid down in the preceding article the company is to show no special favour to any ship, company, or individual[1].

It is obvious that these articles have no such effect as that attributed to them by M. de Lesseps. The phrase "neutral passages" is no doubt somewhat vague. It has been supposed to refer to the impartiality with which access to the Canal is to be granted to all vessels of commerce irrespectively of the nation or company to which they may belong. It may possibly have been employed with some reference to the fact that since the Canal lies within Egyptian territory, ships passing through it would always be exempt from hostilities, unless Egypt happened to be at war.

But the precise meaning of these terms has no bearing upon the question before us, since the document in which they occur has no international significance. It is a charter granted by a Government to a private company, not a treaty between two or more Governments, and a character of neutrality cannot be imposed upon a locality which does not possess it according to the common law of nations except by treaty. In other words: no nation which has

[1] *Parl. Papers*, 1876, Egypt, No. 6.

not bound itself to do so is obliged to respect an artificial neutrality. M. de Lesseps was indeed so well aware of this a few years ago, that in 1877 (May 10) he proposed to the British Government a scheme for an international agreement for maintaining complete liberty of passage for all ships, public or private, even of belligerents; public ships to be prevented by the Egyptian Government from landing troops or stores. This "scheme for the neu-"tralization of the Canal" appeared to Lord Derby to "be open to so many objections" that he declined to make it the subject of negotiations[1]. But at the same time Lord Derby gave the Russian Government to understand that any attempt by Russia to obstruct the Canal would be regarded by Her Majesty's Government as a menace to India, and as likely to put an end to the neutral attitude of England in the Russo-Turkish War. "Her Majesty's Government," he wrote, "are firmly "determined not to permit the Canal to be made the "scene of any combat or other warlike operations." In point of fact, the Egyptian Government has never, even as between itself and the company, contemplated the immunity of the Canal from hostile operations, having stipulated in the Act of 1866, art. 10, for the occupation of strategic points on its banks.

III. The suggestions which have been made as to the international character to be enjoyed in the future by the short sea route between Europe and Asia have been prompted by a variety of motives, among which may be enumerated (1) the desire of the shareholders to receive the largest possible amount of tolls; (2) the wish of traders for unimpeded transit; (3) a sentimental sympathy with commercial as contrasted with other interests; (4) strategical considerations.

The interests of commerce pure and simple would, no

[1] *Parl. Papers*, 1877, Egypt, No. 6.

doubt, best be secured by confining the use of the Canal to private ships, at any rate in time of war, and such an arrangement would also suit the policy of any nation which would not be unwilling to throw difficulties in the way of the communication of Great Britain with her possessions in the East. The shareholders, on the other hand, are anxious to secure the custom of men-of-war and troop-ships, as well as of trading vessels; and our own Government would never consent to surrender its right of at all times sending troops and warships by the shortest route to India. This interplay of interests is well illustrated by the discussions upon the subject which have taken place within the last few years in the "Institut de "Droit International," a fairly representative body, its members being selected in definite proportions from the international lawyers of Europe and America. A committee, the chairman of which was Sir Travers Twiss, was appointed at the meeting of the Institute at Zürich in 1877 to consider the question, and presented a report at the Paris meeting in the year following, proposing for imitation the Clayton-Bulwer treaty with reference to the projected canal through the Isthmus of Panama. Professor Bluntschli wished the passage to be declared free for private vessels even belonging to a nation at war with the Porte; but after a discussion, turning mainly on the ambiguity of the term "neutralization," the Institute confined itself to voting "that it is in the interest of all "nations that the navigation of the Suez Canal be de-"clared, by an international Act, free of any hostile "attempt during war," reserving the details of the subject for further study. A second report, presented to the meeting at Brussels in 1879, suggested the desirability of an international declaration to the effect—

1. That the Powers are agreed that complete freedom of passage through the Canal should be always respected by belligerents in the case of ships of war, as well as of private vessels.

2. That no troops or munitions of war should be landed in the Canal without permission of the territorial Power.

3. That should the territorial Power be at war a reasonable time should be allowed to the trading vessels of its enemy to leave the Canal.

4. That the neutrality of the Canal ought to be respected, even when the territorial Power is at war.

The first three of these proposals are harmless, if not important; but the fourth is so obviously ambiguous, and probably dangerous, that it became the topic of animated discussion. Sir Travers Twiss limited his wishes to an "international protection" of the Canal, but Professor Martens, of St. Petersburg, wished the Canal "neutral-"ized" in the sense that it should in time of war be declared "inaccessible to the warships of belligerents." Varying his phrase, he would prevent it from becoming a "base of military operations," i.e., as he admitted, he would close it to the passage of British troop-ships if Great Britain were at war. It was of course pointed out that Great Britain would never consent thus to tie her hands, and after a long discussion, in the course of which Professor Neumann, of Vienna, advocated the creation of a "marine "Belgium," the question was referred back to the committee, with the ultimate result that at a subsequent sitting the Institute resolved as follows:—

1. It is to the general interest of all nations that the maintenance of the Canal, and its use for communications of every kind, shall be as far as possible protected by treaty.

2. With this object it is desirable that States should come to an arrangement with a view to avoid, as far as possible, every act by which the Canal and its dependencies might be damaged or endangered even in time of war.

3. If any Power should damage the works of the Canal, it shall be bound to repair as speedily as possible the mischief done, and to re-establish the full liberty of the navigation of the Canal[1].

[1] *Annuaire*, 1879-80, I. pp. 127, 329, 349.

I take some credit to myself for my share in reducing to these modest dimensions the propositions approved by the Institute. They were far from satisfying its more ardent members, who, with M. Bluntschli, wished them to be considered as a mere instalment (*étape*) of our views upon the subject.

It is, I think, instructive to remark that M. Martens, who in 1879 insisted upon the necessity of impressing upon the Canal a "neutralization" resembling that imposed upon the Black Sea by the Treaty of Paris, in 1882 frankly confesses that such a proposal is idle, because it could never be accepted by Great Britain. Taking up a new position, he now advocates the permanent neutralization of Egypt as a State independent of the Porte, thus making it for ever unlawful for any belligerent to carry on hostilities in the Canal, or to land forces on its banks[1].

I have cited the opinions expressed by a body of private persons, in default of any discussion of the position of the Canal by accredited diplomatists. The recent Conference at Constantinople had under its consideration proposals for the protection of the Canal, but these were of a merely temporary and exceptional character. The only step taken in the matter by diplomacy is a proposal made by Lord Granville in his despatch of January 3, 1883, to Her Majesty's representatives at Paris, Berlin, Vienna, Rome, and St. Petersburg.

Lord Granville wrote:—

> One result of recent occurrences has been to call special attention to the Suez Canal: firstly, on account of the danger with which it was threatened during the brief success of the insurrection; secondly, in consequence of its occupation by the British forces in the name of the Khedive, and their use of it as a base of the operations carried on in his Highness's behalf, and in support of his authority; and thirdly, because of the attitude assumed by the Direction and officers of the Canal Company at a critical period of the campaign.

[1] *Revue de Droit International*, 1882, p. 355.

As regards the first two of these points, Her Majesty's Government believe that the free and unimpeded navigation of the Canal at all times, and its freedom from obstruction or damage by acts of war, are matters of importance to all nations. It has been generally admitted that the measures taken by them for protecting the navigation and the use of the Canal on behalf of the territorial ruler for the purpose of restoring his authority were in no way infringements of this general principle. But to put upon a clearer footing the position of the Canal for the future, and to provide against possible dangers, they are of opinion that an agreement to the following effect might with advantage be come to between the Great Powers, to which other nations would subsequently be invited to accede.

Lord Granville goes on to suggest:—

1. That the Canal should be free for the passage of all ships in any circumstances.

2. That in time of war a limitation of time as to ships of war of a belligerent remaining in the Canal should be fixed, and no troops or munitions of war should be disembarked in the Canal.

3. That no hostilities should take place in the Canal, or its approaches, or elsewhere in the territorial waters of Egypt, even in the event of Turkey being one of the belligerents.

4. That neither of the two immediately foregoing conditions shall apply to measures which may be necessary for the defence of Egypt.

5. That any Power whose vessels of war happen to do any damage to the Canal should be bound to bear the cost of its immediate repair.

6. That Egypt should take all measures within its power to enforce the conditions imposed on the transit of belligerent vessels through the Canal in time of war.

7. That no fortifications should be erected on the Canal or in its vicinity.

8. That nothing in the agreement shall be deemed to abridge or affect the territorial rights of the Government of Egypt further than is therein expressly provided.

These proposals will no doubt be expressed in less ambiguous terms should they ever be embodied in a convention. Their effect may, perhaps, be stated as follows:—

Nos. 2 and 6 are declaratory of ordinary rules or usages of International Law, applicable to the territorial waters of

Egypt when its sovereign is neutral. Nos. 1, 2, 3, and 7 relate to certain restrictions, not resulting from the ordinary rules of International Law, to be imposed upon the sovereign of Egypt when belligerent. By No. 1 the territorial Power is to be obliged to allow, "under any circumstances," free passage through the Canal to the ships of its enemy, public as well as private; and by No. 3 is obliged (except in defence of Egypt) to grant the same privilege in the Canal itself, in its approaches, and in Egyptian territorial waters generally. No. 2 would appear to forbid the territorial Power, if belligerent (except in defence of Egypt), to allow its own ships of war to remain in the Canal, or to land troops or munitions of war there. By No. 7 it is prohibited from creating fortifications on the Canal or in its vicinity. In exchange for this long list of restrictions on its ordinary rights, Egypt is to be assured that its enemies shall not commit acts of hostility in the Canal or anywhere in its territorial waters, or land troops or munitions of war in the Canal. Lastly, should any vessel of war happen to injure the Canal, the Government to which it belongs must repair the damage done.

I incline to think that of these provisions only the first (supposing it to be limited to the vessels of friendly Powers) and the fifth are such as it is desirable to embody in an international Act. There should be no pretence for an allegation that Egypt, when neutral, is bound to stop the passage of belligerent ships of war; and it is reasonable that a State by whose ships damage is done to the Canal should be responsible for its repair. But it is hardly worth while solemnly to reaffirm the well-understood rights and duties of a neutral State; and the provisions as to the case when Egypt is belligerent seem to me dangerously complicated, even conceding that they are, as they now stand, intelligible. To protect a weak Power by artificial safeguards is to invite a strong Power to break

through them. Treaties are too valuable, and at the same time of too fragile a texture, to be exposed to any unnecessary strain; and treaties of neutralization, unless under very favourable circumstances, are especially likely to become, as Frederick the Great said of treaties of guarantee, "a network of filigree, rather pleasing to the eye "than practically useful." The true safeguard of the Canal, in case of the territorial Power being at war, must be looked for in such a clear understanding between the belligerents and interested neutral Governments as resulted, during the late war between Russia and Turkey, from the announcement by Lord Derby, already mentioned.

It may be desirable to add to the foregoing sketch of the earlier proposals for the neutralization of the Suez Canal a summary statement of the subsequent history of the question, down to its settlement in 1888.

Little was heard of Lord Granville's despatch of January 3, 1883, till early in 1885, when the representatives of the Great Powers met in London to reconsider the financial position of Egypt. Their Declaration of March 17 of that year contains an article (3) to the following effect:—

Whereas the Powers have agreed to recognize the urgent necessity for negotiating with the object of sanctioning, by a Conventional Act, the establishment of a definitive regulation, guaranteeing at all times, and for all Powers, the freedom of the Suez Canal: It has been agreed between the seven Governments above named that a Commission composed of Delegates named by the said Governments shall meet at Paris on March 30, to prepare and draw up this Act, taking for its basis the circular of the Government of Her Britannic Majesty of January 3, 1883. A Delegate of His Highness the Khedive shall sit on the Commission with consultative voice. The draft drawn up by the

Commission shall be submitted to the said Governments, who will then take measures to obtain the accession of the other Powers [1].

The Commission (upon which Delegates of Spain and the Netherlands were admitted to act with those of the seven Powers originally concerned) met, as had been arranged, and appointed a sub-commission to prepare a draft convention, after considering drafts presented on behalf of the English and French Governments respectively. The work of the sub-commission was discussed article by article, with so much divergence of opinion among the Delegates that the Conference separated June 13, without coming to any conclusion [2].

In the course of the autumn it was ascertained that the other Powers were ready to concur in any solution of the question in dispute which might be acceptable both to Great Britain and to France. Negotiations were accordingly resumed between those Powers on November 12, and a Convention was signed on their behalf at Paris, on October 24, 1887 [3], which after receiving the approval of the other Powers in succession, that of the Porte being delayed till June 29, 1888, was eventually signed at Constantinople on October 29, by the Plenipotentiaries of the nine Powers, and was ratified on December 22, 1888. It recites that the nine Powers "wishing to "establish, by a Conventional Act, a definite system des- "tined to guarantee at all times, and for all the Powers, "the free use of the Suez Maritime Canal, and thus to "complete the system under which the navigation of this "Canal has been placed by the Firman of His Imperial

[1] *Parl. Papers*, 1885, Egypt, No. 6; *Eastern Question*, pp. 109, 195, 359. The Turkish Ambassador signed subject to reservations, to which effect was given in art. 10 of the Convention of 1888.

[2] *Parl. Papers*, 1885, Egypt, No. 19. For an interesting account of the deliberations of the Commission by one of the Delegates, M. Asser, see *Revue de Droit International*, t. xx. p. 529.

[3] *Parl. Papers*, 1888, Egypt, No. 1, p. 45.

"Majesty the Sultan, dated February 22, 1866, and sanc-
"tioning the concessions of His Highness the Khedive,
"have named as their plenipotentiaries, &c., &c., who
"have agreed upon the following articles":—

ARTICLE I.

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.

Consequently, the High Contracting Parties agree not in any way to interfere with the free use of the Canal, in time of war as in time of peace.

The Canal shall never be subjected to the exercise of the right of blockade.

ARTICLE II.

The High Contracting Parties, recognizing that the Fresh-Water Canal is indispensable to the Maritime Canal, take note of the engagements of His Highness the Khedive towards the Universal Suez Canal Company as regards the Fresh-Water Canal; which engagements are stipulated in a Convention bearing date the 18th March, 1863, containing an *exposé* and four articles.

They undertake not to interfere in any way with the security of that Canal and its branches, the working of which shall not be exposed to any attempt at obstruction.

ARTICLE III.

The High Contracting Parties likewise undertake to respect the plant, establishments, buildings, and works of the Maritime Canal and of the Fresh-Water Canal.

ARTICLE IV.

The Maritime Canal remaining open in time of war as a free passage, even to the ships of war of belligerents, according to the terms of Article I of the present treaty, the High Contracting Parties agree that no right of war shall be exercised, nor shall any act of hostility, or any act having for its object to obstruct the free navigation of the Canal, be committed in the Canal and its ports of access, nor within a radius of three marine miles from those ports, even though the Ottoman Empire should be one of the belligerent Powers.

Vessels of war of belligerents shall not revictual or take in stores in the Canal and its ports of access, except in so far as may be strictly

necessary. The transit of the aforesaid vessels through the Canal shall be effected with the least possible delay, in accordance with the Regulations in force, and without any other intermission than that resulting from the necessities of the service.

Their stay at Port Saïd and in the roadstead of Suez shall not exceed twenty-four hours, except in case of distress. In such case they shall be bound to leave as soon as possible. An interval of twenty-four hours shall always elapse between the sailing of a belligerent ship from one of the ports of access and the departure of a ship belonging to the hostile Power.

ARTICLE V.

In time of war belligerent Powers shall not disembark nor embark within the Canal and its ports of access either troops, munitions, or materials of war. But in case of an accidental hindrance in the Canal, men may be embarked or disembarked at the ports of access by detachments not exceeding 1,000 men, with a corresponding amount of war material.

ARTICLE VI.

Prizes shall be subject, in all respects, to the same rules as the vessels of war of belligerents.

ARTICLE VII.

The Powers shall not keep any vessel of war in the waters of the Canal (including Lake Timsah and the Bitter Lakes).

Nevertheless, they may station vessels of war in the ports of access of Port Saïd and Suez, the number of which shall not exceed two for each Power.

This right shall not be exercised by belligerents.

ARTICLE VIII.

The Agents in Egypt of the Signatory Powers of the present treaty shall be charged to watch over its execution. In case of any event threatening the security or the free passage of the Canal, they shall meet on the summons of three of their number under the presidency of their Doyen, in order to proceed to the necessary verifications. They shall inform the Khedivial Government of the danger which they may have perceived, in order that that Government may take proper steps to ensure the protection and the free use of the Canal. Under any circumstances, they shall meet once a year to take note of the due execution of the treaty.

The last-mentioned meetings shall take place under the presidency of a Special Commissioner nominated for that purpose by the Imperial Ottoman Government. A Commissioner of the Khedive may also take part in the meeting, and may preside over it in case of the absence of the Ottoman Commissioner.

They shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the Canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation.

ARTICLE IX.

The Egyptian Government shall, within the limits of its powers resulting from the Firmans, and under the conditions provided for in the present treaty, take the necessary measures for ensuring the execution of the said treaty.

In case the Egyptian Government should not have sufficient means at its disposal, it shall call upon the Imperial Ottoman Government, which shall take the necessary measures to respond to such appeal; shall give notice thereof to the Signatory Powers of the Declaration of London of the 17th March, 1885; and shall, if necessary, concert with them on the subject.

The provisions of Articles IV, V, VII, and VIII shall not interfere with the measures which shall be taken in virtue of the present article.

ARTICLE X.

Similarly, the provisions of Articles IV, V, VII, and VIII shall not interfere with the measures which His Majesty the Sultan and His Highness the Khedive, in the name of His Imperial Majesty, and within the limits of the Firmans granted, might find it necessary to take for securing by their own forces the defence of Egypt and the maintenance of public order.

In case His Imperial Majesty the Sultan, or His Highness the Khedive, should find it necessary to avail themselves of the exceptions for which this article provides, the Signatory Powers of the Declaration of London shall be notified thereof by the Imperial Ottoman Government.

It is likewise understood that the provisions of the four articles aforesaid shall in no case occasion any obstacle to the measures which the Imperial Ottoman Government may think it necessary to take in order to ensure by its own forces the defence of its other possessions situated on the eastern coast of the Red Sea.

ARTICLE XI.

The measures which shall be taken in the cases provided for by Articles IX and X of the present treaty shall not interfere with the free use of the Canal. In the same cases, the erection of permanent fortifications contrary to the provisions of Article VIII is prohibited.

ARTICLE XII.

The High Contracting Parties, by application of the principle of equality as regards the free use of the Canal, a principle which forms one of the bases of the present treaty, agree that none of them shall endeavour to obtain with respect to the Canal territorial or commercial advantages or privileges in any international arrangements which may be concluded. Moreover, the rights of Turkey as the territorial Power are reserved.

ARTICLE XIII.

With the exception of the obligations expressly provided by the clauses of the present treaty, the sovereign rights of His Imperial Majesty the Sultan, and the rights and immunities of His Highness the Khedive, resulting from the Firmans, are in no way affected.

ARTICLE XIV.

The High Contracting Parties agree that the engagements resulting from the present treaty shall not be limited by the duration of the Acts of Concession of the Universal Suez Canal Company.

ARTICLE XV.

The stipulations of the present treaty shall not interfere with the sanitary measures in force in Egypt.

ARTICLE XVI.

The High Contracting Parties undertake to bring the present treaty to the knowledge of the States which have not signed it, inviting them to accede to it.

ARTICLE XVII.

The present treaty shall be ratified, and the ratifications shall be exchanged at Constantinople within the space of one month, or sooner if possible.

In faith of which the respective Plenipotentiaries have signed the present treaty, and have affixed to it the seal of their arms.

Done at Constantinople, the 29th day of the month of October, in the year 1888[1].

It must not be forgotten that Great Britain is a party to this Convention only subject to the following important reservation, originally made by Sir Julian Pauncefote, at the last sitting of the Conference of Paris, on June 13, 1885[2], repeated by Lord Salisbury, October 21, 1887, only three days before the Convention was signed on behalf of the Governments of France and Great Britain, and afterwards carefully brought to the knowledge of all the Powers concerned, when their acceptance of it was recommended by the British Government[3]:—

Les Délégués de la Grande-Bretagne, en présentant ce texte de Traité comme le régime définitif destiné à garantir le libre usage du Canal de Suez, pensent qu'il est de leur devoir de formuler une réserve générale quant à l'application de ces dispositions en tant qu'elles ne seraient pas compatibles avec l'état transitoire et exceptionnel où se trouve actuellement l'Égypte, et qu'elles pourraient entraver la liberté d'action de leur Gouvernement pendant la période de l'occupation de l'Égypte par les forces de sa Majesté Britannique.

It is owing to this reservation that, as was explained by Mr. Curzon in the House of Commons, July 12, 1898, "the terms of this Convention have not been brought into "practical operation."

[1] *N. R. G.*, 2me série, t. xv, p. 557. *Parl. Papers*, 1889, Commercial, No. 2. In the unratified Convention of May 22, 1887, between Great Britain and Turkey, it had been agreed (art. 3) that the Powers signatory of the Treaty of Berlin should be invited to approve of a Convention, the terms of which are sketched, "tendant à mieux "assurer la liberté de la navigation du canal de Suez." *N. R. G.*, 2me série, xiv. p. 440.

[2] *Parl. Papers*, 1885, Egypt, No. 19, p. 292.

[3] *Parl. Papers*, 1888, Egypt, No. 1, pp. 36, 47, 48.

XV

NOTICES NÉCROLOGIQUES SUR QUELQUES MEMBRES ANGLAIS DE L'INSTITUT DE DROIT INTERNATIONAL

1. MOUNTAGUE BERNARD[1].

MESSIEURS,

Notre dernière réunion a été attristée par la nouvelle, qui nous attendait à Turin, du décès de notre Président. A ce moment, la perte qui venait de nous frapper était trop récente pour pouvoir donner lieu, selon l'usage pieux de notre compagnie, à une notice nécrologique ; mais M. le secrétaire général, en nous en faisant part, y a consacré quelques paroles, et l'assemblée s'est levée en silence, en témoignage de respect et de regret.

Il m'est permis aujourd'hui de vous offrir une courte appréciation de la vie et des travaux de notre ami et collègue.

La famille Bernard est d'origine française. A la révocation de l'Édit de Nantes, un des aïeux de notre Président quitta sa patrie, comme tant d'autres huguenots, et se réfugia dans la colonie britannique de la Jamaïque, où

[1] Lue à la séance de l'Institut de Droit International du 4 Septembre, 1883, à Munich. (*Annuaire*, vii. p. 36.)

plusieurs générations de ses descendants ont possédé des terres dans le voisinage de la baie de Montego.

Notre vénéré collègue, troisième fils de M. Charles Bernard, d'Eden, Jamaïque, et de Marguerite-Anne, fille de M. Baker, de Warseley House, dans le comté de Worcester, naquit à Tibberton, dans le comté de Gloucester, le 28 janvier 1820.

Après avoir fait ses premières études à l'école de Sherbourne, il entra au collège de la Très Sainte Trinité, à Oxford, où il passa ses examens avec beaucoup d'éclat, ayant obtenu les honneurs de première classe *in litteris humanioribus*. Puis, ayant pris le grade de bachelier en droit, il s'adonna, à Londres, aux études préparatoires à la profession d'avocat, où il eut la bonne fortune d'être un des élèves de M. Palmer, actuellement comte Selborne et lord chancelier. Admis au barreau par la société de Lincoln's Inn en 1842, il se voua pendant plusieurs années à la pratique, en même temps qu'aux lettres.

Peu de gens ont étudié à Oxford, il y a quarante ans, sans éprouver, dans l'un ou l'autre sens, l'influence du mouvement anglo-catholique, dirigé par le D^r^ Pusey et par les cardinaux Manning et Newman. Les questions ecclésiastiques se discutaient alors partout. Le dogme était 'dans l'air.' C'est ainsi que M. Bernard est devenu l'un des fondateurs, et, à ce qu'on a dit, pendant plusieurs années le rédacteur du journal *The Guardian*, qui, commencé en 1846, a obtenu un très grand succès et est resté l'organe de la partie la plus instruite du clergé anglican. C'est sans doute grâce à M. Bernard que ce journal s'est acquis la réputation d'être spécialement bien renseigné sur l'histoire contemporaine.

En 1859, M. Bernard fut rappelé à Oxford, comme le premier titulaire de la chaire de droit international et de diplomatie, que venait de fonder, sur les revenus du collège d'*All Souls*, la Commission royale universitaire de l'an 1854.

Il a rempli cette charge, pour le plus grand profit de l'université et de la science, jusqu'à l'an 1874. Pendant ce temps, il a constamment mis ses talents au service de l'université, comme examinateur, comme membre du conseil académique, comme l'un des délégués chargés de la direction de l'imprimerie clarendonienne.

Il était aussi juge-assesseur de la cour du chancelier de l'université, dont il a aidé à mettre la procédure, qui était antérieurement celle du droit romain, en harmonie avec celle du droit commun. En 1870, il a été élu *fellow* du collège d'*All Souls*.

L'activité de M. Bernard ne se renfermait point dans les limites de ses fonctions académiques. Sa valeur était connue aux hommes d'État, et ils ne tardèrent pas à l'utiliser.

Après avoir été secrétaire de la commission royale chargée de l'examen de la question de la peste bovine, en 1865, il fut nommé, en 1868, membre de la commission chargée de faire enquête et rapport sur le droit de naturalisation et d'allégeance. C'est à la suite du rapport de cette commission que la Grande-Bretagne a renoncé, par la loi de 1870, à la règle *nemo potest exuere patriam suam*. En 1871, l'usage autrefois si répandu de confier des emplois diplomatiques aux professeurs universitaires a été renouvelé, après des siècles de désuétude, en faveur de M. Bernard. Il fut, avec lord De Grey et Ripon, sir Stafford Northcote, sir Edward Thornton et sir John Macdonald, un des hauts commissaires qui ont négocié et signé le traité de Washington. A son retour d'Amérique, il fut promu par son université au grade de docteur en droit. Il fut appelé à être membre du conseil privé de la Reine, puis membre de la commission judiciaire de ce conseil, qui siège comme cour d'appel dans les causes ecclésiastiques et coloniales. Il a rédigé, avec sir Roundell Palmer (lord Selborne), sur l'ordre du gouvernement britannique, l'exposé (*case, countercase et argument*) présenté par la Grande-Bretagne au tribunal arbitral de Genève en 1872.

Ces occupations multiples et absorbantes déterminèrent M. Bernard à renoncer à sa chaire, ce qu'il a fait en 1874. Après cette date il n'a plus fait à Oxford que des séjours de quelques semaines, résidant ordinairement à Londres, ou, avec ses sœurs (il ne s'est jamais marié), à Overross, dans le comté de Hereford. Il était un des membres fondateurs de l'Institut de droit international, et il a assisté à plusieurs sessions. Il s'est rendu à Genève, à La Haye, à Zurich, et vous vous rappelez, Messieurs, avec combien de tact et de dignité il nous a présidés à Oxford. En 1876, M. Bernard était membre de la commission royale d'enquête nommée au sujet des esclaves fugitifs recueillis à bord de navires de guerre britanniques dans les eaux étrangères. L'année suivante, il fut nommé, par acte du Parlement, membre de la commission chargée de rédiger des règlements nouveaux pour l'université et les collèges d'Oxford. Il a remplacé lord Selborne, redevenu lord chancelier, dans la présidence de cette commission, et, sans doute, il a beaucoup influé sur les conclusions de celle-ci. On les a qualifiées souvent de transaction trop timide entre les intérêts de l'université et des collèges, mais il n'est pas douteux qu'elles ont opéré une véritable révolution, ou plutôt un retour vers la constitution académique d'il y a cinq cents ans. L'université a été enrichie aux dépens des collèges ; plusieurs nouvelles chaires ont été fondées ; l'organisation du corps enseignant a été améliorée ; les facultés ont regagné une certaine mesure d'autonomie. L'exécution de cette œuvre impliquait une infinité de détails administratifs et financiers. Il fallait élaborer tout un *corpus iuris academicum* pour le règlement non seulement de l'université, mais aussi de chacun de ses vingt collèges. Travail d'Hercule, dont la responsabilité, pendant trois ans, a pesé principalement sur M. Bernard.

Sa constitution, qui ne paraît pas avoir jamais été bien robuste, a fini par céder aux fatigues qu'il s'imposait. Ayant été atteint d'un refroidissement, il ne put recouvrer

ses forces. Après avoir langui pendant quelques mois, il est mort à Overross, le 2 septembre 1882.

Pour faire honneur à la mémoire de M. Bernard, le Collège de *All Souls* a fait ériger dans la chapelle de cette société un monument où se dessine, dans un médaillon, ce profil plein d'intelligence et de distinction, et où on lit l'inscription suivante :—

IN MEMORIAM

MONTACUTI BERNARD, I. C. D.

A SECRETIS REGINAE CONSILIIS

QUI IN HOC COLLEGIO

XV ANNOS

TUM IURIS GENTIUM PROFESSOR

TUM SOCIUS BIS COOPTATUS

ACADEMIAM

SCIENTIA, INGENIO, EXEMPLO

AUXIT ET ORNAVIT

REIPUBLICAE

FIDELITER DESERVIIT

LEGATUS, IUDEX, COMMISSARIUS.

HOC MARMOR PONI CURAVERUNT

CUSTOS ET CONSOCII.

NAT. XVIII IAN. MDCCCXX. OB. II SEPT. MDCCCLXXXII.

Voici la liste, que je crois complète, des écrits (signés) de M. Bernard :—

Dans les *Oxford Essays*, 1856, un article intitulé : *The Growth of Laws and Usages of War.* London, J. W. Parker & Son.

Remarks on the Proposed Alteration of the Law of Naval Prize, 1857. London.

An Introductory Lecture on International Law, 1859. Oxford.

A Lecture on the Principle of Non-intervention, 1860. Oxford and London, Parker.

Two Lectures on the Present American War, 1861. Oxford, Parker.

Notes on some Questions suggested by the Case of the Trent, 1862. Oxford.

A Lecture on Alleged Violations of Neutrality by England in the Present War, 1863. London, Ridgway.

A Letter to the Vice-Chancellor on the Study of Law at Oxford, 1864. Imprimerie de l'université.

A Lecture on the Schleswig-Holstein Question, 1864. Même imprimerie.

Remarks on some late Decisions respecting the Colonial Church, 1866. Oxford.

Notes on the Academical Study of Law at Oxford, 1868. Oxford.

Four Lectures on Diplomacy, 1868. London, Macmillan.

A Historical Account of the Neutrality of Great Britain during the American Civil War, 1870. London, Longmans.

A Letter to the Rt. Hon. W. E. Gladstone on the Statutes of the University (27 *February*), 1882. London, Rivington.

On remarque dans tous ces ouvrages une foule de bonnes qualités et surtout un soin consciencieux, ainsi qu'un style limpide qui reflète le bon sens et le bon goût de l'auteur. Mais l'homme ne s'y révèle que très imparfaitement. M. Bernard était trempé dans la littérature des Grecs et des Romains ; très versé dans les langues et les littératures modernes, dans l'histoire, dans le droit, qu'il avait étudié non seulement comme un système de règles positives, mais aussi dans son développement et dans ses principes. Nul ne saurait être mieux que vous, Messieurs, à même d'apprécier à leur juste et haute valeur ses connaissances spéciales en matière de droit des gens. Il était d'une finesse d'esprit extraordinaire, critique rigoureux de ses propres travaux, laborieux, désintéressé,

impartial. Je l'ai vu de très près dans notre vie quasi monastique d'*All Souls*. Sa conversation était pleine de charme, quoique son amabilité laissât percer quelquefois un fond d'austérité. Sa voix était d'un grand poids dans nos conseils : on trouvait en lui tant de modération jointe à tant d'habileté ! Il en était ainsi dans tous les cercles où M. Bernard se trouvait. Il avait toujours en vue le bien public, et pour le bien public il était généreux de son temps ainsi que de son argent.

Je pense que les deux grandes œuvres de sa vie sont l'arrangement de la question anglo-américaine et la réorganisation de l'université d'Oxford ; mais on pourrait dresser une liste fort longue des autres affaires importantes qu'il a menées à bonne fin. Dans sa carrière de citoyen dévoué, si prématurément interrompue, sa devise a toujours été : *Le travail et le devoir.*

2. SIR ROBERT PHILLIMORE[1].

La science du droit international vient de perdre un des plus vénérés d'entre les jurisconsultes qui l'ont cultivée. Sir R. Phillimore, qui avait renoncé à ses fonctions à la cour suprême, le 21 mars 1883, est mort le 4 février 1885. En attendant une notice biographique digne de lui, nous allons résumer en quelques mots les traits de sa vie extérieure.

L'illustre juge était né le 5 novembre 1810, à Londres ; il était le second fils du Dr Joseph Phillimore, lui aussi juriste distingué, qui a longtemps occupé la chaire de droit civil (droit romain) à Oxford. Robert Phillimore, après avoir fait ses études à Oxford, entra au barreau du collège des docteurs en droit à Londres, vieux séminaire de droit romain et international qui, après avoir existé plus de trois siècles, a été supprimé en 1857. Le jeune avocat

[1] *Revue de Droit International*, xvii. p. 160.

acquit de bonne heure une grande réputation. Il eut un véritable renom pour ses connaissances de droit ecclésiastique, et il joua un rôle très important dans les cours ecclésiastiques et de l'amirauté. Il fut nommé chancelier de plusieurs diöcèses, et, en 1862, avocat général de la Reine. En 1867, il devint juge de la cour de l'amirauté, ainsi que juge de la cour d'appel pour les causes ecclésiastiques (*Dean of the Arches*) et membre du conseil privé de la Reine. En 1875, par suite de la réforme judiciaire de 1873, il devint juge de la division de la cour suprême qui s'occupe des causes maritimes, testamentaires et matrimoniales. De 1853 à 1857, il avait siégé, comme représentant de Tavistock, dans la chambre des communes. En 1881, il a reçu la dignité héréditaire de 'baronet,' laquelle a passé à son fils, le Dr Walter Phillimore, chancelier du diocèse de Lincoln et avocat distingué dans les causes ecclésiastiques et maritimes [1].

Sir Robert Phillimore était bien connu à l'étranger par ses *Commentaires sur le droit international*, lesquels lui ont valu son élection, en 1883, comme membre honoraire de l'Institut de droit international.

Il était également connu en Angleterre par son *Droit ecclésiastique de l'Église anglicane* et par la collection de ses jugements dans la *Court of Arches*, de 1867 à 1875. Outre les sciences juridiques, sir R. Phillimore était très versé dans les littératures classiques et modernes. Ainsi il avait traduit le *Laocoon* de Lessing. Il a été aussi le biographe de *George Lord Lyttelton*. Il était l'ami intime des hommes les plus éminents de son temps, qu'il attirait autant par le charme de sa personnalité que par l'extrême culture de son esprit.

[1] Sir Walter Phillimore est devenu en 1897 Juge de la Cour Suprême.

3. WILLIAM EDWARD HALL[1].

Depuis la réunion de l'année passée, l'Institut et surtout la section britannique de notre compagnie ont subi une perte irréparable.

Le 30 novembre dernier, la mort a subitement enlevé notre ami et collègue Guillaume-Édouard Hall, encore, selon toute apparence, en pleine jouissance d'une santé exceptionnelle.

Ce triste événement est à peine croyable pour ceux qui se rappellent cette intelligence si fine et toujours si infatigablement alerte, cette forme si rudement vigoureuse. Pour beaucoup des amis de Hall, pour moi assurément, après une camaraderie parfaite de quarante ans, la vie a été sensiblement assombrie par ce décès.

Consacrons quelques moments à la mémoire du cher défunt.

M. Hall, fils unique du docteur Guillaume Hall, cadet d'une bonne famille écossaise, naquit à Leatherhead, dans le comté de Surrey, le 22 août 1835. Pendant son enfance, il voyagea beaucoup, surtout en Italie, où son père était attaché comme médecin à la Légation britannique à Naples. Ainsi a commencé, sans doute, de bonne heure, le penchant de M. Hall pour les beaux-arts et pour les langues modernes. Rentré en Angleterre, son père, qui avait des idées particulières sur l'éducation, ne le fit pas entrer dans un des grands Lycées du pays; mais, après quelques années d'instruction à la maison, il l'envoya, âgé seulement de 17 ans, à l'Université d'Oxford. A Oxford, Hall s'est distingué surtout dans l'étude de l'Histoire moderne, qu'on venait alors d'introduire dans les exercices académiques. Il a aussi remporté le prix rectoral pour une thèse, traitant de l'effet produit sur

[1] Lue à la séance de l'Institut de Droit International, du 8 Août, 1895, à Cambridge. (*Annuaire*, xiv. p. 320.)

l'Espagne par les métaux précieux de l'Amérique. Après avoir pris ses grades, Hall se rendit à Londres, afin d'y faire son droit. En 1861, il y fut reçu avocat, mais il ne sentit jamais de véritable attrait pour la carrière du barreau. Il se voua plutôt aux études artistiques, étant lui-même aquarelliste du premier ordre, et ne laissa jamais échapper l'occasion de se perfectionner dans la connaissance de plusieurs langues continentales. Il n'a pas cessé d'ailleurs de travailler aux questions historiques, politiques et économiques, rêvant toujours quelque grand ouvrage, soit sur l'histoire de la civilisation, soit sur les colonies britanniques. Il s'est aussi fait une spécialité des problèmes de stratégie et d'organisation militaire; surtout il a énormément voyagé. A ses débuts, il se passionnait pour les Alpes, dont il a fait plusieurs des premières ascensions, qu'il à décrites avec beaucoup de verve dans les *Annuaires* du Club Alpin[1].

Plus tard, à diverses reprises, il a parcouru l'Europe. Il a assisté à la défense de Sonderbourg par les Danois en 1864. Il a chassé en Norvège et en Laponie. En 1868, il a visité l'Amérique du Sud; en 1886, l'Inde et le Japon. En 1884, il a essayé de se joindre aux forces britanniques chargées de délivrer le général Gordon bloqué dans Khartoum : il a dû se contenter d'assister à des hostilités dans le voisinage de Suakin. En 1890, il se trouvait encore en Égypte. De tous ces voyages il rapportait d'admirables dessins, ainsi que des collections, choisies avec un goût exquis et une rare compétence, d'objets d'art et d'antiquités de toutes sortes :—vases grecs, urnes étrusques, sabres japonais. De ces objets il a formé un beau musée dans la maison de campagne qu'il a habitée, après avoir quitté Londres, à Llanfihangel dans le comté de Monmouth, et puis à Coker dans le comté de Somerset. Il a été marié deux fois, mais il n'a pas laissé d'enfants.

[1] Cf. *The Alpine Journal*, t. i. pp. 92, 141, 209; t. iii. p. 200; t. iv. p. 327; t. v. p. 23; t. vii. p. 169.

Quant à sa personnalité, permettez-moi de vous citer quelques mots que j'en ai écrits dans une Revue juridique anglaise : 'En lui, nous avons perdu un des hommes les plus accomplis de sa génération. C'est sa versatilité même qui l'a empêché de parvenir davantage à ce que l'on nomme ordinairement le succès. Il est décédé au moment où l'on venait précisément de reconnaître sa capacité de rendre des services spéciaux à la patrie (en effet, il avait été désigné par notre gouvernement pour fonctionner parmi les arbitres dans l'affaire des pêcheries sur les côtes de la Terre-Neuve). Il était un ami des plus loyaux ; peut-être aussi avait-il des antipathies assez prononcées. Il travaillait avec une rapidité extraordinaire. Il était grand amateur de chasse. Son courage touchait à la témérité. Il était à la fois sensitif et fier, modeste et ambitieux, un compagnon des plus charmants. Du barreau il n'aimait ni les fatigues ni les lenteurs. Il se proposait plutôt comme idéal le gentilhomme anglais, s'occupant de la vie de campagne, mais en même temps doué de connaissances encyclopédiques, ainsi que de goûts artistiques. Sa vraie vocation eût été, selon moi, d'être devenu général en chef[1].'

Hall a été élu *associé* de notre Institut en 1875, et *membre* en 1882. Il a assisté aux sessions de La Haye, de Paris (1878 et 1894), d'Oxford, de Turin, et de Heidelberg. Lui et moi, nous nous sommes presque toujours rendus ensemble à ces réunions, où nous avons lutté, comme spécialement à Turin, en 'enfants perdus,' pour faire valoir les idées anglaises sur le droit de prise. La pensée m'est bien pénible que ces jours de coopération scientifique, de voyages joyeux, sont à jamais clos.

Ce n'est pas ici le lieu d'apprécier, en détail, les services rendus à la science par M. Hall, ni la valeur, si universellement reconnue, de ses écrits. C'était presque par hasard qu'il a été amené à cultiver le droit des gens.

[1] *The Law Quarterly Review*, t. xi. p. 113.

Il a préludé, en 1874, par une bonne monographie sur les *Droits et les Devoirs des Neutres;* mais son œuvre capitale est, sans aucun doute, son *Traité de Droit international,* publié en 1880, dont la quatrième édition vient de paraître. 'Ce livre, ai-je écrit, fait époque dans la littérature de notre science. Nul ouvrage si bien proportionné, imprégné de tant de bon sens, si complet, rédigé avec tant de netteté, n'avait jusqu'alors paru dans la langue anglaise. L'ouvrage est tout de suite devenu classique, même parmi les juristes du continent, nonobstant leurs préventions à l'égard de ce qu'ils appellent l'*école historico-pratique* dans le Droit des Gens.'

Il m'est à peine nécessaire de rappeler à votre souvenir la publication toute récente du traité sur *Les pouvoirs extraterritoriaux et la juridiction extraterritoriale de la couronne britannique;* matières difficiles à coordonner, et jusqu'ici peu explorées, que M. Hall a discutées avec une grande habileté.

Le décès prématuré de notre collègue a été une vraie calamité, à la fois pour sa patrie, pour la science, et pour l'Institut de droit international.

4. SIR TRAVERS TWISS[1].

L'Institut de droit international vient de perdre encore une de ses célébrités dans la personne de son doyen d'âge, sir Travers Twiss, dont le nom a figuré depuis 1891 parmi ceux de nos membres honoraires. Devenu membre de notre société presque à son origine, il s'y est toujours loyalement intéressé jusqu'à ses derniers jours. Il a aussi gagné la chaude amitié de tous ceux qui ont eu le plaisir de le rencontrer pendant nos sessions. Malgré son âge très avancé, malgré la calamité qui l'a frappé il y

[1] Lue à la séance de l'Institut de Droit International, du 26 Août, 1897, à Copenhague. (*Annuaire,* xvi. p. 325.)

a un quart de siècle, il se montrait toujours gai, toujours affectueux, travailleur infatigable, causeur charmant.

Sir Travers Twiss, fils aîné du Rév. Robert Twiss, LL.D., de Trevallyn dans le comté de Denbigh (propriété qu'il avait héritée de sa mère, née Anne Travers), naquit à Westminster le 19 mars 1809. En 1826, à l'âge de 17 ans, il entra au Collège de l'Université à l'Université d'Oxford, où il se distingua beaucoup. En prenant le grade de bachelier ès-arts, en 1830, il obtint les honneurs de première classe *in scientiis mathematicis et physicis*, et de seconde classe *in litteris humanioribus*. Élu *fellow* de son collège, il s'y dévoua pendant quelques années aux devoirs de *tuteur*. Il y a aussi rédigé en quatre volumes, en 1842, une édition de *Tite Live*, avec des notes en latin, où il a exposé les vues, dans ce temps-là peu répandues en Angleterre, de l'historien Niebuhr. De 1842 à 1847, il a occupé à l'université la chaire d'économie politique, et a publié en 1847 un aperçu des progrès de l'économie politique en Europe depuis le 16^{me} siècle. Mais ces études n'étaient que les *παράεργα* des débuts de sa carrière professionnelle. Il avait pris ses grades en droit, et, déjà en 1840, avait été admis au barreau par la Société de Lincoln's Inn, et, un an plus tard, au 'Collège des Avocats' ou des 'Docteurs en droit,' société qui a cessé d'exister depuis 1857, mais qui pendant des siècles avait joui du monopole de la pratique, ainsi que des positions judiciaires, dans la Cour de l'amirauté et les cours ecclésiastiques. C'était devant de tels tribunaux, comme spécialiste en droit romain, canonique et international, que notre défunt ami s'est élevé aux premiers rangs parmi les avocats, tout en écrivant les ouvrages que nous allons énumérer tout à l'heure. Pendant la guerre de Crimée, il a plaidé constamment devant la cour des Prises. En 1849, il est devenu commissaire-général du diocèse de Cantorbéry; en 1852, vicaire-général de l'archevêque; en 1858 chancelier du diocèse de Londres; en la même année, con-

seiller de la Reine ; en 1862, avocat-général de l'Amirauté. En 1867, il est devenu le dernier titulaire de l'office d'avocat-général de la Reine, dont la suppression a été la conséquence logique de l'extinction précédente du collège des avocats. Il a été aussi créé chevalier. De 1852 à 1855, il a professé le droit international au collège du Roi, à Londres. De 1855 à 1870, il fut titulaire de la chaire de droit romain, à Oxford. Il a été membre de plusieurs commissions royales, par exemple, de la commission chargée de la délimitation du Nouveau-Brunswick et du Canada (1851) et des commissions chargées de faire enquête et rapport sur les règlements du collège de Maynooth en Irlande (1852), sur les lois de neutralité (1867), sur les lois de l'allégeance et de la naturalisation (1868), sur les lois de mariage (1869). Il a eu l'honneur d'être consulté par le roi des Belges sur la constitution à donner au nouvel État du Congo. Il a été chargé par le gouvernement de la Grande-Bretagne, comme conseiller extraordinaire de l'Ambassade, d'assister à la Conférence de Berlin de 1885.

Voici la liste de ses publications juridiques :—

The Oregon Question examined with respect to Facts and the Law of Nations, 1846.

The Relations of the Duchies of Schleswig and of Holstein with the Crown of Denmark and the Germanic Confederation, 1848.

The Letters Apostolic of Pope Pius IX, considered with reference to the Law of England and the Law of Europe, 1851.

Three Lectures on the Science of International Law (delivered at King's College, London), 1856.

The Law of Nations considered as Independent Political Communities ; cet ouvrage consiste en deux volumes, publiés successivement, dont le premier est intitulé : *The Rights and Duties of Nations in time of Peace*, 1861 ; 2me éd., 1884 ; éd. française, 1887 ; et le second : *The*

Rights and Duties of Nations in time of War, 1863 ; 2me éd., 1875 ; éd. française, 1889.

The Black Book of the Admiralty, containing all the most Important Codes of Mediaeval Maritime Law, 6 vols., publiés sous la direction du ' Master of the Rolls,' 1871-1876.

Il est à regretter que, quittant son propre domaine, sir Travers Twiss ait édité, assez médiocrement, sous les auspices de la même autorité, 1879-1884, en 6 volumes, le traité de Bracton, *De legibus et consuetudinibus Angliae.*

D'autre part, beaucoup des nombreux articles de revue qu'il a fournis, notamment à la *Revue de Droit international*, au *Nautical Review*, et au *Law Magazine and Review*, ainsi que ses rapports adressés à notre Institut, ont une véritable valeur scientifique. Comme on l'a souvent remarqué, tout ce que sir Travers Twiss a écrit sur le droit international a le grand mérite qu'on n'y trouve jamais de discussions purement académiques, mais toujours les vues d'un homme versé dans la haute politique et dans les débats judiciaires. Le moment n'est pas encore venu de formuler une appréciation définitive de l'œuvre de notre vénéré et regretté confrère. Un tel essai n'est assurément pas de ma compétence. D'ailleurs j'en serais dispensé par la notice nécrologique, à la fois juste et sympathique, qui vient de paraître dans la *Revue de Droit international*, de la plume si autorisée de notre honoré confrère, M. Rivier. J'ajouterai seulement que M. Twiss est mort à Fulham, après un court accès de sa maladie des bronches, le 14 janvier 1897, à l'âge de 87 ans. J'allais le voir assez souvent, et jusque dans les derniers mois de sa vie. Son accueil bienveillant, son amabilité imperturbable, ses préoccupations scientifiques, prolongées jusqu'à la fin, seront toujours pour moi un ineffaçable et touchant souvenir de cette vieillesse sereine d'une vie laborieuse et accidentée.

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